



## **COUNCIL CHAMBERS**

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

<b>COUNCIL MEMBERS</b>	<b>REDEVELOPMENT AGENCY</b>
Steve Tate, Mayor	Steve Tate, Chair
Larry Carr, Mayor Pro Tempore	Larry Carr, Vice-Chair
Mark Grzan, Council Member	Mark Grzan, Agency Member
Marby Lee, Council Member	Marby Lee, Agency Member
Greg Sellers, Council Member	Greg Sellers, Agency Member

**WEDNESDAY, APRIL 18, 2007**

**AGENDA**

**JOINT MEETING**

**CITY COUNCIL REGULAR MEETING**

**and**

**REDEVELOPMENT AGENCY REGULAR MEETING**

**7:00 P.M.**

**CALL TO ORDER**

(Mayor/Chairperson Tate)

**ROLL CALL ATTENDANCE**

(City Clerk/Agency Secretary Torrez)

**DECLARATION OF POSTING OF AGENDA**

**Per Government Code 54954.2**

(City Clerk/Agency Secretary Torrez)

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**INTRODUCTION**

Group Study Exchange Team from Buenos Aires  
*Mayor Tate*

**PROCLAMATIONS**

Alcohol Awareness Month  
*Francisco Dominguez*

Public Safety Day  
*Bruce Cumming*

National Architecture Week  
*Leslie Miles*

National Library Week  
*Rosanne Macek*  
*Emily Shem-Tov*

**RECOGNITIONS**

**CITY COUNCIL REPORTS**

Council Member Lee

**CITY COUNCIL COMMITTEE REPORTS**

**CITY MANAGER'S REPORT**

**CITY ATTORNEY'S REPORT**

**OTHER REPORTS**

City Treasurer's Quarterly Report  
*City Treasurer Roorda*

**PUBLIC COMMENT**

**NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.**

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME  
THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND  
PRESENT IT TO THE CITY CLERK.**

(See notice attached to the end of this agenda.)

**PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE  
CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY  
COUNCIL/REDEVELOPMENT AGENCY.**

## ***City Council and Redevelopment Agency Action***

### **ADOPTION OF AGENDA**

## ***City Council Action***

### **CONSENT CALENDAR:**

#### **ITEMS 1-7**

The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

#### **Time Estimate**

#### **Page**

**Consent Calendar: 1 - 10 Minutes**

1. **NEW LIBRARY PROJECT – MARCH CONSTRUCTION PROGRESS REPORT** .....  
**Recommended Action(s):** Information Only.
2. **MARCH 2007 FINANCE & INVESTMENT REPORT – CITY** .....  
**Recommended Action(s):** Accept and File Report.
3. **AUTHORITY TO SIGN BELOW MARKET RATE (BMR) PROGRAM DOCUMENTS** .....  
**Recommended Action(s):** Authorize the Assistant to the City Manager to Execute Certain Standard Agreements and Other Documents Relating to the BMR Program; Subject to Review and Approval by the City Attorney.
4. **CO-SPONSORSHIP OF VOLUNTEERS FOR OUTDOOR CALIFORNIA TRAIL-BUILDING PROJECT** .....  
**Recommended Action(s):** Cosponsor the Event.
5. **COYOTE VALLEY SPECIFIC PLAN – ENVIRONMENTAL IMPACT REPORT (EIR) REVIEW PROCESS** .....  
**Recommended Action(s):** Approve Process by Minute Action.
6. **AGREEMENT WITH CSG CONSULTANTS INC. FOR BUILDING DIVISION IN-HOUSE PLAN CHECK AND RELATED SERVICES** .....  
**Recommended Action(s):** Authorize the City Manager, Subject to Review and Approval by the City Attorney, to Execute the Agreement with CSG Consultants Inc.
7. **APPROVE JOINT CITY COUNCIL SPECIAL MEETING AND LIBRARY CULTURE & ARTS COMMISSION SPECIAL MEETING OF APRIL 4, 2007** .....

## *City Council Action*

### CONSENT CALENDAR:

#### ITEM 8

Time Estimate

Page

Consent Calendar: 1 - 10 Minutes

8. ADOPT ORDINANCE NO. 1823, NEW SERIES .....  
Recommended Action(s): Waive the Reading, and Adopt Ordinance No. 1823, New Series, and Declare  
That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title  
and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MORGAN HILL AMENDING SECTION 18.50.027 BY EXTENDING THE SUNSET  
DATE FOR THE EXEMPTION FOR ON-SITE PARKING REQUIREMENTS FOR  
COMMERCIAL/OFFICE USES WITHIN THE DOWNTOWN AREA. (ZA 07-04: CITY OF  
MORGAN HILL – DOWNTOWN PARKING EXEMPTION)**

## *Redevelopment Agency Action*

### CONSENT CALENDAR:

#### ITEM 9

Time Estimate

Page

Consent Calendar: 1 - 10 Minutes

9. MARCH 2007 FINANCE & INVESTMENT REPORT – RDA .....

## *City Council and Redevelopment Agency Action*

### CONSENT CALENDAR:

#### ITEMS 10-12

Time Estimate

Page

Consent Calendar: 1 - 10 Minutes

10. GRANADA THEATER ..... 10  
Recommended Action(s): Adopt Recommendations by the Council Community and Economic  
Development Committee for the Redevelopment of the Granada Theater as a Community Asset.
11. APPROVE JOINT REGULAR CITY COUNCIL AND REGULAR REDEVELOPMENT AGENCY  
MEETING MINUTES OF MARCH 28, 2007 ..... 12  
Recommended Action(s): Approve the Minutes as Submitted.
12. APPROVE JOINT REGULAR CITY COUNCIL AND REGULAR REDEVELOPMENT AGENCY  
MEETING MINUTES OF APRIL 4, 2007 ..... 28

## City Council Action

### PUBLIC HEARINGS:

	Time Estimate		Page
13.	15 Minutes	<u><b>CONSIDERATION OF EXTENDING MEDICINAL MARIJUANA DISPENSARY MORATORIUM</b></u> ..... Public Hearing Opened. Please Limit Your Remarks to 3 Minutes. Public Hearing Closed Council Discussion. Action- <u><b>Extend</b></u> the Ordinance Prohibiting the Issuance of Permits, Entitlements, Licenses or any other Approvals for Medicinal Marijuana Dispensaries in the City of Morgan Hill for 10 Months and 15 Days. (Requires a Four-Fifths Vote)	54
14.	30 Minutes	<u><b>AMENDMENTS TO DEVELOPMENT AGREEMENTS FOR ELEVEN (11) RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PROJECTS</b></u> ..... Public Hearing Opened. Please Limit Your Remarks to 3 Minutes. Public Hearing Closed Council Discussion. Action- <u><b>Motion to Waive</b></u> the Reading in Full of Each Ordinance. Action- <u><b>Motion to Introduce</b></u> Ordinances by Title Only for Amendments A – K. (Roll Call Vote)	
A.)		<u><b>MP-03-04: COCHRANE-BORELLO</b></u> ..... Approval of an Amendment to the Development Agreement for a 15-Unit Single Family Residential Development, Amending Exhibit B to Allow a Four-Month Extension of Time for the Fiscal Year 2006-2007 Building Allotments (7 Units), Extending Fiscal Year 2006-2007 Allotments to October 30, 2007.	
B.)		<u><b>MC-04-26: COCHRANE-MISSION RANCH</b></u> ..... Approval of Amendment to the Development Agreement for a 48-Unit Single-Family Residential Development, Amending Exhibit B to Allow a Four-Month Extension of Time for the Fiscal Year 2006-2007 Allotments Construction Deadline (Extending to October 30, 2007 for 18 Units) and Adding a June 30, 2010 Deadline for the Fiscal Year 2009-2010 Building Allotment (15 Units).	
C.)		<u><b>MC-04-25: COCHRANE-LUPINE</b></u> ..... Approval of an Amended Development Agreement for 36 Units (Phases 3B, 4 & 5) in an Overall 92-Unit Single Family Residential Development, Amending Exhibit B to Allow a Six Month Extension for the Fiscal Year 2006-2007 Building Allotment, Extending to December 30, 2007.	
D.)		<u><b>MC-04-19: EAST MAIN-MARRAD/SAN SAVIGNO</b></u> ..... Approval of a Development Agreement Amendment for a 26-Unit Single-Family Residential Development, Amending Exhibit B to Allow a Four-Month Extension of Time for the Fiscal Year 2006-2007 Building Allotments (13 Units To October 31, 2007), and Two-Month Extensions of Time for the Fiscal Years 2007-2008 (5 Units to June 30, 2008) and 2008-2009 (8 Units To June 30, 2009) Building Allotments. Also, Amendments to Paragraph 14 of the Development Agreement to Clarify per Unit Costs and Include Commitments for the Fiscal Year 2009-2010 Allocations with Respect to the Payment of Fees, Phasing of Park and Recreation Amenities and Provision of Below Market Rate Units, with a June 30, 2010 Deadline.	

**PUBLIC HEARINGS:**

**Time Estimate**

**Page**

- E.) MP-02-03: TILTON-GLENROCK .....**  
Approval of Amended Development Agreement for an 81-Unit Single-Family Multi-Family Residential Development, to Remove the Application Filing Deadlines and Retain the Currently Approved Commencement of Construction Dates.
- F.) MMP-03-01: NATIVE DANCER-QUAIL MEADOWS .....**  
Approval of Amended Development Agreement for a Six-Unit, Custom Single-Family Residential Development, Amending Exhibit B to Allow a One-Year Extension of Time for Two of the Four Custom Lots, Extending the Fiscal Year 2005-2006 Allotment to June 30, 2009.
- G.) MC-04-22: JARVIS-SOUTH VALLEY DEVELOPERS/MADRONE PLAZA .....**  
Approval of a Development Agreement Amendment for a 78-Unit Multi-Family Residential Development, Amending Exhibit B to Allow a Six-Month Extension of Time for the Fiscal Year 2006-2007 Building Allotments (36 Units To December 31, 2007) and Six-Month Extension for the Fiscal Year 2007-2008 Allotment (13 Units To 10-30-08).
- H.) MC-05-02: JARVIS-SOUTH COUNTY HOUSING/MADRONE PLAZA .....**  
Approval of an Amended Development Agreement for a 95-Unit Multi-Family Residential Development, Amending Exhibit B to Allow a Six-Month Extension of Time for the Fiscal Year 2007-2008 Allotment (54 Units to October 30, 2008) and a Six-Month Extension of Time for the Fiscal Year 2008-2009 Building Allotment (41 Units to October 30, 2009).
- I.) MMC-04-07: GINGER-CUSTOM ONE .....**  
Approval of a Development Agreement Amendment for a Five-Unit Single-Family Residential Development, Amending Exhibit B to Allow a Eight-Month Extension of Time of the Residential Building Allotment, Extending the Fiscal Year 2006-2007 Allotment to February 29, 2008.
- J.) MMC-04-06: SAN PEDRO-AHMADI .....**  
Approval of a Development Agreement Amendment for a 3-Unit Multi-Family Residential Development to Allow a Two-Month Extension of Time of the Residential Building Allotment, Amending Exhibit B to Extend the Fiscal Year 2006-2007 Allotment to August 30, 2007.
- K.) MMC-04-05: DEL MONTE-GIOVANNI .....**  
Approval of a Development Agreement Amendment for a Six-Unit Multi-Family Residential Development, Amending Exhibit B to Allow a Six-Month Extension of Time of the Building Allotment, Extending the Fiscal Year 2006-2007 Allotment to December 30, 2007.

## ***Redevelopment Agency Action***

### **PUBLIC HEARINGS:**

	<b>Time Estimate</b>		<b>Page</b>
15.	10 Minutes	<b><u>CALIFORNIA YOUTH SOCCER ASSOCIATION (CYSA) OPERATING LEASE OF GRASS FIELDS AT OUTDOOR SPORTS CENTER</u></b> ..... Public Hearing Opened. Please Limit Your Remarks to 3 Minutes. Public Hearing Closed RDA Board Discussion. Action- <b><u>Authorize</u></b> the Executive Director to Execute the Lease Agreement with Youth Soccer Association for the operations and Maintenance of the Grass Fields at the Center; Subject to Review and Approval by the Agency Counsel.	

## ***City Council Action***

### **OTHER BUSINESS:**

	<b>Time Estimate</b>		<b>Page</b>
16.	10 Minutes	<b><u>POLICIES AND PROCEDURES FOR IMPLEMENTATION OF MEASURE F: 100 DOWNTOWN HOUSING ALLOTMENTS</u></b> ..... <b><u>Recommended Action(s):</u></b> <b><u>Adopt</u></b> Resolution Approving Policies and Establishing Procedures for Implementing Measure F through a Competition.	
17.	10 Minutes	<b><u>ADOPT ORDINANCE NO. 1822, NEW SERIES</u></b> ..... <b><u>Recommended Action(s):</u></b> 1. <b><u>Adopt</u></b> Resolution Acknowledging Receipt of Correspondence from Joshua Safran, Attorney for DeRose Development LLC, and Providing an Analysis and Response to the Correspondence; and 2. <b><u>Waive</u></b> the Reading, and <b><u>Adopt</u></b> Ordinance No. 1822, New Series, and <b><u>Declare</u></b> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: <b>AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 18.76 (SIGN CODE) BY MODIFYING THE ELIGIBILITY REQUIREMENTS FOR FREEWAY SIGNS AND ESTABLISHING A PROCESS TO ALLOW AN OFF-SITE BUSINESS TO BE LOCATED ON A FREESTANDING MONUMENT SIGN. (ZA 07-03: CITY OF MORGAN HILL – OFF-SITE SIGNS)</b>	

### **FUTURE COUNCIL AGENCY-INITIATED AGENDA ITEMS:**

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

## ***City Council Action and Redevelopment Agency Action***

### **CLOSED SESSION:**

#### **1.**

#### **CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR**

Authority:	Government Code 54956.8
Real Property Involved:	95 East Third Street (APN 726-14-001)
Negotiating Parties:	
For City/Agency:	City Manager/Executive Director; City Attorney/Agency Counsel; Director of Business Assistance & Housing Services
For Property Owners:	Llagas Valley Investments, LLC/Depot Center Inc.
Closed Session Topic:	Acquisition of Real Property

## ***City Council Action***

### **CLOSED SESSION:**

#### **1.**

#### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	1

### **OPPORTUNITY FOR PUBLIC COMMENT**

### **ADJOURN TO CLOSED SESSION**

### **RECONVENE**

### **CLOSED SESSION ANNOUNCEMENT**

### **ADJOURNMENT**



**PUBLIC COMMENTS ON ITEMS *NOT* APPEARING ON AGENDA**

Following the opening of Council/Agency business, the public may present comments on items *NOT* appearing on the agenda that are within the Council's/Agency's jurisdiction. Should your comments require Council/Agency action, your request will be placed on the next appropriate agenda. No Council/Agency discussion or action may be taken until your item appears on a future agenda. You may contact the City Clerk/Agency Secretary for specific time and dates. This procedure is in compliance with the California Public Meeting Law (Brown Act) G.C. 54950.5. Please limit your presentation to three (3) minutes.

**PUBLIC COMMENTS ON ITEMS APPEARING ON AGENDA**

The Morgan Hill City Council/Redevelopment Agency welcomes comments from all individuals on any agenda item being considered by the City Council/Redevelopment Agency. Please complete a Speaker Card and present it to the City Clerk/Agency Secretary. This will assist the Council/Agency Members in hearing your comments at the appropriate time. Speaker cards are available on the table in the foyer of the Council Chambers. In accordance with Government Code 54953.3 it is not a requirement to fill out a speaker card in order to speak to the Council/Agency. However, it is very helpful to the Council/Agency if speaker cards are submitted. As your name is called by the Mayor/Chairman, please walk to the podium and speak directly into the microphone. Clearly state your name and address and then proceed to comment on the agenda item. In the interest of brevity and timeliness and to ensure the participation of all those desiring an opportunity to speak, comments presented to the City Council/Agency Commission are limited to three minutes. We appreciate your cooperation.

**NOTICE**

**AMERICANS WITH DISABILITIES ACT (ADA)**

The City of Morgan Hill complies with the Americans with Disability Act (ADA) and will provide reasonable accommodation to individuals with disabilities to ensure equal access to all facilities, programs and services offered by the City. If you need special assistance to access the meeting room or to otherwise participate at this meeting, including auxiliary aids or services, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation. Please make your request at least 48 hours prior to the meeting to enable staff to implement reasonable arrangements to assure accessibility to the meeting.

If assistance is needed regarding any item appearing on the City Council/Agency Commission agenda, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation.

**NOTICE**

Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council/Agency Commission at, or prior to the Public Hearing on these matters.

**NOTICE**

The time within which judicial review must be sought of the action by the City Council/Agency Commission which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.



## CITY COUNCIL/

## REDEVELOPMENT AGENCY

**MEETING DATE: APRIL 18, 2007**

### GRANADA THEATER

**RECOMMENDED ACTION(S):** Adopt Recommendations by the Council Community and Economic Development Committee (the Committee) for the redevelopment of the Granada Theater as a community asset.

**EXECUTIVE SUMMARY:** The City Council's adopted 2007 Policies and Goals for the Downtown call for the Committee to evaluate options for redeveloping the Granada Theater as a community asset, and prepare a report and recommendation for Council/Redevelopment Agency action by April 2007

On March 7, 2007 the Committee held a workshop on the future of the Granada Theater. It was attended by the property owner, a theater operator, representatives from the Poppy Jasper Film Festival, the Downtown Association, and the Chamber of Commerce. Based on the discussion and consensus of the parties, the Committee decided to explore the concept of reviving the Granada Theater as a full functioning movie theater with a possible restaurant/bar in part of the building. The Committee again discussed the Granada at its meeting on April 4, 2007 and refined its recommendations as follows

- Direct staff to discuss the concept with the property owner, including possible terms and conditions
- Direct staff to discuss the concept with a theater operator including operation and renovation costs, lease terms and conditions, length of commitment needed, financial resources available, possible on-site restaurant, and parking requirement, and
- Direct staff to explore the cost and feasibility of dividing the theater and tobacco shop into separate parcels
- Staff to provide interim reports to the Committee on its progress

The Committee recommends that staff report back to the Council/Redevelopment Agency in 90 days (in July 2007) with staff analysis of all the issues and possible role for the Redevelopment Agency. Based on the schedules of the parties involved and complexity of the project, staff anticipates that it will take 90 days to work out the details of a proposal.

**FISCAL IMPACT:** Currently unknown

Agenda Item # **10**

Prepared By:

*[Signature]*  
BAHS Manager

Approved By:

*[Signature]*  
BAHS Director

Submitted By:

*[Signature]*  
Executive Director

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**CITY OF MORGAN HILL  
JOINT REGULAR CITY COUNCIL AND  
REGULAR REDEVELOPMENT AGENCY MEETING  
MINUTES – MARCH 28, 2007**

**CALL TO ORDER**

Mayor Pro Tempore/Vice-Chairman Carr called the meeting to order at 7:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Grzan, Lee, and Sellers  
Absent: Mayor/Chairman Tate

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**INTRODUCTION**

Finance Director Dilles introduced the City's newly hired Budget Manager Mark Murray.

**PROCLAMATIONS**

**RECOGNITIONS**

**CITY COUNCIL REPORT**

Mayor Pro Tempore Carr reported that the Health Trust operates the *Meals on Wheels* program. He stated that one of the ways the Health Trust helps promote this program is to conduct an annual "Mayors' Meals on Wheels Program." He indicated that last week, he participated in this year's program on behalf of Mayor Tate; delivering meals to homebound seniors in Morgan Hill. He stated that St. Louise Hospital in South County provides the meals. He felt this to be an incredible program. He said that he shared some time with the individuals he delivered meals to; enjoying his time doing so. He said that there are approximately 12 clients in Morgan Hill, and that everyday they are delivered a hot meal by a volunteer from this program. In some cases, this may be the only hot meal individuals receive that day, and that it may be the only interaction/conversation with the volunteer they have who checks in on the homebound seniors. It is his hope the City will hear more about this program and hear about ways to expand the program to individuals in Morgan Hill.

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## **CITY COUNCIL COMMITTEE REPORTS**

Council Member Lee indicated that the Financial Policy Committee met this afternoon, and that the Committee is reviewing the Capital Financing and Debt Policy. She said that the Committee is also working on its 2007-08 workplan.

## **CITY MANAGER REPORT**

City Manager Tewes stated that he would respond this evening to some of the City Council's television reviews. He said that individuals in his family wonder why he and the City Attorney present reports at some meetings and not at other meetings. He stated that it is his and the City Attorney's intention to provide the Council background information to administrative matters that may come up during the week, or to point out items of interest on the agenda. Just because the City Attorney or he do not have a report to present does not mean they have not been working all week.

Mayor Pro Tempore Carr indicated that a meeting will be held with the Taylor Avenue residents and State officials regarding proposed group homes in that neighborhood. He requested the City Manager report back on the status of the meeting as part of the City Manager's upcoming reports.

## **CITY ATTORNEY REPORT**

City Attorney Kern stated that she has nothing to report this evening, but clarified that she has been diligently working on city attorney items.

## **OTHER REPORTS**

### **PUBLIC COMMENT**

Mayor Pro Tempore/Vice-Chairman Carr opened the floor to public comments for items not appearing on this evening's agenda.

Brigitte Heiser, Vice President for Independence Day, Inc. (IDI), addressed IDI's outstanding bill with the City that is less than \$3,000. She requested the City allow IDI to defer payment of this bill until after the Fourth of July festivities as IDI needs operating capital. She informed the Council that donations to IDI do not typically start coming in until the middle of June and that IDI is cash poor at this point of time. She stated that there were unexpected expenses that occurred this past year such as public works rentals that were higher than expected, and that the police department overstaffed the event for the downtown family festival in the interest of public safety. However, it is anticipated that the police department will lower the number of police officers to be assigned to the festivities this year; a cost savings.

Mayor Carr informed Ms. Heiser that the City could not discuss the request this evening as it is not an agenda item. He acknowledged that there are some pending deadlines that are quickly approaching. He requested that Ms. Heiser work with City staff regarding the request. He said that being able to meet the minimum requirements to submit for the pool of non profit funding on March 31, 2007 will be important for IDI.

Shanna Boigon said that it has come to the Real Estate Association's attention that the connection of Santa Teresa Boulevard to Hale Avenue has been raised. She informed the Council that an engineer commented that the discussion of the extension of Santa Teresa Boulevard would be placed on the City Council's agenda this year; however, she has not seen the item placed on the agenda. She stated that the realtors would like to know when this item is to be discussed by the Council as they have real concerns about the Santa Teresa Boulevard extension.

Mayor Pro Tempore Carr informed Ms. Boigon that he would ask staff to contact her and give her an idea where the discussion about the extension of Santa Teresa Boulevard would be on the City's workplan for this year. He acknowledged that this discussion has not been placed on a Council agenda this year.

No further comments were offered.

## ***City Council and Redevelopment Agency Action***

### **ADOPTION OF AGENDA**

**Action:**        *The Agenda was adopted as printed.*

## ***City Council Action***

### **CONSENT CALENDAR:**

Council Member Grzan requested that Item 2, and Council Member Sellers requested that items 3 and 7 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Lee, the City Council, on a 4-0 vote with Mayor Tate absent, **Approved** Consent Calendar Items 1 and 4-6 as follows:*

1.    **FEBRUARY 2007 FINANCE & INVESTMENT REPORT - CITY**  
     **Actions:** ***Accepted** and **Filed** Report.*
  
4.    **ACCEPTANCE OF TENNANT AVENUE WIDENING PROJECT**  
     **Actions:** *1) **Accepted** as Complete the Tennant Avenue Widening Project in the Final Amount of \$783,638; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office*
  
5.    **AWARD OF PROFESSIONAL SERVICES CONTRACT TO PREPARE DESIGN DOCUMENTS FOR DUNNE/HILL STORM DRAIN PROJECT – PHASE 1**  
     **Actions:** ***Authorized** the City Manager to Execute a Consultant Agreement with Schaaf and Wheeler in the Amount of \$23,400 for Design Documents of the Dunne/Hill Storm Drain Project – Phase 1, Subject to Approval by the City Attorney.*

6. **ACCEPT THE DEPOT STREET UNDERGROUNDING UTILITIES PROJECT**

**Actions:** 1) **Accepted** as Complete the Depot Street Undergrounding Utilities Project in the Final Amount of \$880,869; 2) **Transferred** \$12,700 from the Current Year Redevelopment Agency (RDA) Economic Development Budget (317.8010.42231) to the Project Account (537004.f317.86360.131) to Reconcile Final Costs, Including an Unanticipated Change Order, 3) **Authorized** the City Manager to Execute Change Order #3 in the Amount of \$5,403 for the Depot Street Undergrounding Utilities Project; and 4) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office

2. **AMERICANS WITH DISABILITIES ACT ACCESSIBILITY AT SPECIAL EVENTS HELD ON PUBLIC PROPERTY**

Council Member Grzan thanked staff and the Public Safety & Community Services Committee for their outstanding work in the development of the guidelines for Special Events in compliance with the Americans With Disabilities Act. He read through the recommendations and finds them all to be outstanding; good things for the City to be doing to make sure public events are accessible. It was his belief that we sometimes forget about those with special needs in the planning of special events. He was pleased to see the City will be adopting policies to make special events more friendly; especially for those with special needs. He looks forward to seeing the policies implemented.

**Actions:** On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Mayor Tate absent, **Approved** the Americans with Disabilities Act Guidelines for Special Events Held on Public Property in Morgan Hill as Part of the Approval Process for Special Events Funding Sponsorship.

3. **WATER CONSERVATION MEMORANDUM OF UNDERSTANDING (MOU) ADJUSTMENT**

Shanna Boigon said that it has been wonderful to work with Programs Manager Eulo in the development of this plan of getting toilets retrofitted in older homes. She said that the Real Estate Association would agree to help disseminate information. Discussed was the development of a water conservation brochure. She said that the realtors want to be a part of this program, but did not want to see a retrofit at the point of sale because it would be a nightmare to try and implement. She said that the cost to the City to implement such a program would far exceed having an individual take the action voluntarily.

Mayor Pro Tempore Carr stated that realtors' participation in getting the word out about this program will be important to its success.

Council Member Grzan indicated that the Council will be interested in seeing the voluntary program succeed. He said that the Council will be monitoring the program carefully with Programs Manager Eulo. However, should the program fail to generate the type of response needed, the Council will consider an ordinance that will help conserve water. It was his hope that the cooperative effort will be fruitful, and that he would be in support of the policy to help it become successful. However, if not successful, the City will need to take other actions to make sure that it does the right thing for the community.

Ms. Boigon stated that the Realtors Association is in agreement with the comments expressed by Council Member Grzan. However, she did not believe the Realtors Association could carry the entire burden as not everyone is selling their homes. She felt that the City needs to get the information out to individuals who are not selling their homes.

Council Member Sellers indicated that he may be interested in participating in the replacement of landscaping with low usage landscaping/irrigation system the Council is looking toward implementing. As a citizen of the community, this would not result in a direct conflict. He encouraged other individuals to take a look at a demonstration garden as an example, and to consider other landscaping alternatives that do not use water.

**Actions:**      *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Mayor Tate absent, **Authorized** the City Manager to Execute the First Amendment to a Memorandum of Understanding (MOU) with the Santa Clara Valley Water District; Subject to the Review and Approval of the City Attorney.*

## **7.      TERMINATION OF LEASE WITH SOLARA ENERGY**

Council Member Sellers noted that the Council received a supplemental report from staff this evening. He said that it sounds as though there may be some attempt, by the existing tenant, to discuss and/or bring the terms of the lease agreement current. He understands that it was within staff's discretion on whether it would bring this item back to the Council. He inquired whether there was a need for the Council to weigh in on the matter, or whether there was a point where the existing tenant may want to appeal staff's decision or move forward. He requested clarification from the City Manager.

City Manager Tewes clarified that it is staff's intention to terminate the lease with Solara Energy for failure to meet the Council's objectives; specifically for failing to meet the terms of the lease. He indicated that staff received inquiries from the tenant that they might be willing to come current with long past due rents. Should the tenant come in with a check to bring the rent current, staff's recommendation would remain the same. However, should the Council wish to adopt a different approach, it would be appropriate for the Council to schedule the item for a future meeting date.

Council Member Sellers expressed concern that an outstanding balance is due. He inquired whether the City would be taking an action that would eliminate any desire on the tenant's part to come current.

City Manager Tewes noted that the item before the Council is informational only, and that staff is advising the Council of the actions staff would be taking, and the reasons for the actions. He said that staff is terminating the lease for two reasons: 1) the tenant has failed to meet the general objectives of the program; and 2) the tenant failed to meet the terms of the lease. He indicated that the tenant has come before the Council, from time to time, and has informed the Council that they were current when in fact they were not. He informed the Council that staff has sent the tenant notice after notice; giving them deadlines which they have failed to meet. Now that the tenant has received the final notice, they are asking if they can pay the past due rents. He expressed concern that the pattern and practices are such that this is not the type of tenant the City wants. More importantly, the tenant has not met the objectives the Council has set forth. The City wants to have a compatible local business in the police



station that would meet the City's revenue needs of helping to pay for the cost of the police station. He noted that this business has proven that they are not viable time after time.

Council Member Sellers clarified that he was not interested in trying to figure out a way to keep the tenant in the police facility for a longer period of time. He was trying to find a way to make sure the City recovers what has already been expended. It was his interest to see if there was an opportunity to help clear the books on this item.

City Manager Tewes indicated that City staff has the discretion to work with the tenant if they have a proposal, and to avoid any claims the City may have for additional years of rent owed the City in the future.

City Attorney Kern stated that the Council has legal remedies. In a lease termination, the Council has the ability to pursue the claim for past due rent, and the ability to pursue claims for future rents for the term of the lease. She clarified that by terminating the lease, the Council is not foreclosing the ability to potentially obtain money from this tenant.

**Actions:**      *No Action Required, Information Only.*

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:**      *On a motion by Agency Member Sellers and seconded by Agency Member Lee, the Redevelopment Agency Board, on a 4-0 vote with Chairman Tate absent, Approved Consent Calendar Item 8 as follows:*

#### **8.      FEBRUARY 2007 FINANCE & INVESTMENT REPORT – RDA**

**Actions:** *Accepted and Filed Report.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **9.      SOLID WASTE MANAGEMENT RATE AMENDMENT – Resolution No. 6087**

Programs Manager Eulo presented the staff report; indicating that once a year, South Valley Disposal & Recycle (SVDR) timely submits a request to the City to raise the limit on the fees that they can charge. He stated that the City sets a limit on the amount that SVDR can charge to their customers. He informed the Council that the rate adjustment request is 1.98%, a low/modest increase. He indicated that staff supports the adoption of the 1.98% rate increase.

Mayor Pro Tempore/Vice-Chairman Carr opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Grzan indicated that the Utilities & Environment Committee reviewed the proposed rate hike, and found that the requested rate increase to be in compliance with the contract in place with the City.

**Action:**        *On a motion by Council Member Grzan and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Tate absent, Approved Resolution No. 6087, to increase the Refuse Rate.*

10.    **ZONING AMENDMENT, ZA-06-06; USE PERMIT, UP-06-06; SITE REVIEW, SR-06-07; MINOR EXCEPTION, EX-06-05; LAUREL-JIFFY LUBE – Ordinance No. 1821, New Series and Resolution No. 6088**

Senior Planner Marlott presented the staff report; informing the Council that the request is to remove the Planned Unit Development (PUD) overlay from a ¾ acre parcel located within the Walnut Grove PUD. He informed the Council that the City recently received two applications for general plan amendments on the two large pieces of vacant land to increase the commercially zoned area that would expand the PUD. He indicated that a couple of years ago, as a part of another land use discussion involving this PUD, there was some direction from the Council to remove this particular parcel and the developed parcel below Walnut Grove from the PUD. Therefore, the applicant's request would be consistent with the Council's previous direction. In addition to rezoning, the applicant is proposing an approximately 3,500 square foot automobile service facility known as Jiffy Lube. This use would require the approval of a conditional use permit as well as site review permit. He indicated that a minor exception is needed in order to allow a two-space parking reduction. He said that the minor exception is supported by the fact that there is more than enough parking during peak hours. Further, most of the customers would be waiting to be served or are being served. He informed the Council that on February 15, 2007, the Architectural & Site Review Board reviewed the site review permit and unanimously recommends approval of this permit. On March 13, 2007, the Planning Commission unanimously recommended approval of the rezoning and the conditional use permit. Staff recommends Council adoption of the mitigated negative declaration as well as the rezoning and various permitting entitlements.

Council Member Lee inquired whether this is a typical sized piece of land for this type of business. She inquired whether there were any concerns about traffic coming in and out from other lots (different stores/driveways) located in the area.

Senior Planner Marlott indicated that this is a fairly constrained lot as it has three street frontages and that some of the site planning was a little challenging. After reviewing the plans with the Planning Commission and the ARB, everyone is comfortable with how the project lays out. He informed the Council that one of the conditions, in the approval of the Scrambl'z development, was the recordation of an easement to provide for future access to this particular parcel. The condition consolidated some of the ingress issues. Staff reviewed traffic, through the environmental review process, and did not find any impacts associated with the use.

Council Member Lee noted that adjacent uses include Scrambl'z, Walgreens, and Starbucks. She felt that there were a lot of opportunities for cars to come out of the area onto Laurel at the same time.

Senior Planner Marlott said that staff reviewed traffic circulation even after Trader Joe's was opened. He said that the level of service in the area would not elevate this particular use to cause any concerns from a traffic standpoint.

Mayor Pro Tempore/Vice-Chairman Carr opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Mayor Tate absent, **Adopted** the Mitigated Negative Declaration.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Mayor Tate absent, **Waived** the Reading in Full of Ordinance No. 1821, New Series.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council **Introduced** Ordinance No. 1821, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, AMENDING THE ZONING DESIGNATION FROM PUD (HC) (PLANNED UNIT DEVELOPMENT-HIGHWAY COMMERCIAL) TO HC (HIGHWAY COMMERCIAL) ON A 0.66-ACRE PARCEL (APN 726-43-004) ADJACENT TO AND SOUTHWESTERLY OF THE WALNUT GROVE DRIVE/LAUREL ROAD INTERSECTION (APPLICATION NO. ZA-06-06: LAUREL – JIFFY LUBE)** by the following roll call vote: **AYES:** Carr, Grzan, Lee, Sellers; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Tate.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Mayor Tate absent, **Adopted** Resolution No. 6088; Approving the Conditional Use Permit, Site Review and Minor Exception applications.*

**11.    ZONING AMENDMENT, ZA-07-03: CITY OF MORGAN HILL OFF-SITE SIGNS – Ordinance No. 1822, New Series**

Senior Planner Marlott indicated that over the past few years, the City's Business Assistance and Housing Services Department has been working with the Chamber of Commerce's Economic Development Committee on a list of economic development inhibitors. He said that two of these inhibitors involve the City's Sign Ordinance to which staff has been working on through a series of amendments. He indicated that the first amendment includes freeway sign eligibility; noting that the current ordinance regulates freeway signs, and was adopted in 1999 with input from a citizen's committee who met over the course of a year. The goal of the committee was to improve sign visibility in order to increase the City's tax base, and to attempt to aggregate some of the sign messages in order to avoid the proliferation of signs in the City. He said that the current sign regulations address several issues (e.g., height, size, number, location and eligibility). He informed the Council that the proposed amendments address the eligibility requirements for signage. He stated that the current sign ordinance stipulates that in order to be eligible to be placed on a sign along the freeway, the use has to be freeway dependent, and if not freeway dependent, the business has to be at least 15,000 square feet in size. The

business cannot be located more than 200 feet from the freeway right-of-way, or be located within one of four zoning districts: Highway Commercial, Planned Unit Development, Theme Unit Development (TUD), or General Commercial zoning district. He said that this particular inhibitor was highlighted with the Trader Joe's project which is a non freeway dependent use, is 13,500 square feet in size, and is located a little over 300 feet from the freeway right of way.

Senior Planner Marlott informed the Council that as part of its analysis, staff inventoried all of the various freeway signs in the City. He indicated that there are 13 freeway signs in the city, 10 being shared use signs that collectively have room for up to 12 additional tenants. He stated that further analysis indicates that there are some tenants on the freeway signs that are non conforming in that they are located more than the required 200 foot distance from the freeway.

Senior Planner Marlott indicated that when this zoning amendment application was reviewed by the Planning Commission a couple of weeks ago, staff originally proposed to increase the freeway distance requirements from 200 feet to 750 feet. Staff also recommended that commercial recreational uses zoned "public facility," as well as the PUD and TUD zoning districts be allowed freeway signage. The reason for this recommendation was to give the City the opportunity to advertise the aquatics center and the soccer complex on freeway signage. It was felt that the 750 foot distance took in the various PUDs located around the major intersections in town. He informed the Council that at the Planning Commission meeting, three of the commissioners felt the 750 feet to be a little excessive while three other Planning Commissioners concurred with staff's recommendation. After much debate, one of the Planning Commissioners changed their vote. Therefore, on a 4-2 vote, the Planning Commission agreed to recommend Council draw the line at 600 feet from the freeway. In looking at the map, staff believes that drawing the line at 600 feet from the freeway, would still achieve staff's objectives of including the two city facilities, and takes in the PUDs within the major intersection. He informed the Council that staff included the 600 foot distance within the ordinance before it.

Senior Planner Marlott stated that there was a slight concern that increasing the distance may result in the proliferation of these types of signs within the City. The Planning Commission requested that staff return to look at the possibility of limiting/capping the number of signs in the City. He said that the Planning Commission was willing to look at increasing the height limit, the number of tenants that could be included on freeway signs, etc., as a follow-up amendment review. Another item staff is proposing, as part of the eligibility requirements is addressing the size of non freeway dependent uses. He informed the Council that staff is recommending a reduction from 15,000 square feet to 12,000 square feet. He stated that in looking at the files from the early 1990s, it does not appear that the 15,000 square foot number carried any significance as it appears that this size was borrowed from an existing shopping center sign program. By reducing this number to 12,000 square feet, it would allow some regionally serving uses such as Trader Joe's to be eligible for freeway signage. He noted that the particular sign that Trader Joe's is proposing would require a conditional use permit under the City's current ordinance. Assuming the proposed amendments are adopted by the Council, there is still one more step required by Trader Joe's in order to be allowed freeway signage.

Senior Planner Marlott stated that the second group of amendments being proposed this evening has to do with the ability of a tenant to advertise on an offsite monument sign. He noted that the current sign code states that offsite monument signs are not allowed. He stated that this has been an issue that has periodically been raised in the City. He indicated that Trader Joe's has expressed an interest in placing a

monument sign somewhere along Dunne Avenue near the vicinity of their store. Staff proposes to include a provision in the code that would allow a tenant to place a sign on an offsite monument sign as long as they secure a conditional use permit subject to three findings: 1) the site is geographically located such that it has limited visibility from an arterial road; 2) it is necessary in order to allow the business to be competitive; and 3) would not have a significant affect on the character or integrity of the area. He informed the Council that the Planning Commission, in reviewing this group of amendments, concurred with staff's recommendation. Therefore, the Planning Commission has forwarded a recommendation of approval as stated in the ordinance before the Council. He noted that there was a third group of amendments that had to do with the ability of small shopping centers with tenants of less than 14,000 square feet to have monument signs. He indicated that this was an economic inhibitor that was in place a couple of years ago and was reviewed by the Architectural and Site Review Board (ARB). The ARB suggests that smaller shopping centers could have signage that would allow up to three tenants. Staff included this recommendation in its report to the Planning Commission. However, the Planning Commission expressed concern that there might be a proliferation of these types of signs, and requested information relative to the number of shopping centers that this would affect. He stated that since there was no sense of urgency in these sets of amendments, they will return to the Council in the near future once staff completes its analysis.

Council Member Grzan noted that item 4.3.c states that sign design will not have a significant adverse affect on the character and the integrity of the surrounding area. He inquired how staff would evaluate this statement. He further inquired whether there were policies in place to make sure that the sign structure is aesthetically pleasing.

Senior Planner Marlott indicated that the review of the signs would be subjective. He stated that in order to receive use permit approval from the Planning Commission, three findings would need to be made. The most critical finding to be made is the geographical constraint, and a business not being visible from an arterial road. He informed the Council that most of the monument signs are located within a shopping center. The City's ordinance requires the approval of a master sign program by the ARB. He stated that it is through this process that monument signs are reviewed for consistency with the architecture and the surrounding areas. The monument signs that come with freestanding commercial uses are sometimes included with the site review application, and will be reviewed by the ARB to ensure they are conforming, aesthetically pleasing, and appropriate for the area.

Mayor Pro Tempore/Vice-Chairman Carr opened the public hearing.

Frank DeRose informed the Council that he was in attendance representing the DeRose Family who own the Chevron and the KFC parcels located within the Walnut Grove PUD. The DeRose Family also owns the 6.82 acre parcel of bare land located behind the Chevron and KFC parcels. He stated that all of these parcels are past, present, and/or potential users of a sign included in the Community Development Department's sign inventory. He indicated that the Council received an e-mail from him last week that addressed the DeRose Family's objections to the zoning amendment application. The reasons for objection are the following: 1) capacity of sign number 5. He said that sign number 5 has  $\frac{2}{3}$  of one panel vacant, and that sign 5 will not have adequate capacity for all current and future eligible advertisers should the zoning amendment pass. He stated that the best estimate for the eventual number of users of sign number 5 is 9 major users/minor advertisers that could require as much as 540 square feet of advertising space. He noted that the current capacity of the sign is 270 square feet. He indicated

that the current municipal code allows for a maximum of six users and 280 square feet of sign space. He informed the Council that the Walnut Grove PUD development plan would be coming before the Council later this year and felt that there would be additional major users. Should the Council relax the eligibility requirements, and the Council does not increase the number of allowed users on the sign, he did not believe there would be adequate capacity on freeway signs. 2) Code compliance issue. He stated that in 1993, Ordinance No. 1134 was adopted by the Council to read as follows: "The owner of new shared use signs shall covenant with the City to develop, and to offer additional panels on the sign to other eligible businesses. The owner of the new sign will charge a proportional share of the cost of installing and maintaining the sign to any business that subsequently shares the sign." He noted that the staff report for this ordinance states that a business which receives a use permit would be conditioned to lease space on the sign panels in the future at cost. He informed the Council that the Community Development Department has confirmed that the owner of sign number 5 has not entered into the required covenant with the City. Although sign 5 was constructed after the ordinance was passed, without the covenant, he did not believe there would be a guarantee that users of the sign within the Walnut Grove PUD will have reasonably priced advertising space as intended by the Municipal Code.

Mayor Pro Tempore Carr informed Mr. DeRose that his e-mail and the map were included in the Council's agenda packet.

Council Member Grzan noted that Mr. DeRose has indicated that he is the property owner of the property being discussed, and of additional properties. Mr. DeRose further states that when the other properties in the Walnut Grove PUD are developed, there would not be sufficient space on sign number 5 to handle the current and future needs.

Dan Ehrler, Executive Director, Chamber of Commerce, informed the Council that Laura Brunton, Chairperson for the Chamber of Commerce Board, spoke at the Planning Commission in support of staff's zoning amendment recommendation, and stated her appreciation of the efforts that have been made. He informed the Council that the Chamber of Commerce believes the addition of the signage being proposed, and the opportunity for signage in the ordinance, would be beneficial. He noted that Trader Joe's has been the focus for the initiation of this process. He stated that this element of the sign ordinance has been identified as an economic development inhibitor that has been a concern for the Chamber. He stated that the Chamber of Commerce believes the ordinance amendment would increase the viability of the general area as it will draw individuals to the location/businesses. With the directional signage that is being worked on through a process that he, Ms. Brunton and others are involved with, it is felt that directional signs would pull individuals to the visitors information center, the downtown, and other important areas not frequented. It was his belief this would be an important addition to the economic development viability for Morgan Hill. He requested clarification as to the reason why a business cannot have signs on two freeway signs. It is the Chamber of Commerce's hope the Council will approve the recommended actions before it, and allow the process to take place as quickly as possible.

No further comments being offered, the public hearing was closed.

Council Member Grzan noted that Mr. DeRose raised a concern about the properties yet to be developed. He noted that the City's intersections have several properties that are not yet developed. He

does not know how the City would determine the size of a monument size in terms of all the potential tenants that could some day build. He did not know how to handle this uncertainty.

City Manager Tewes clarified that the Council is addressing freeway pylon signs, the tall freeway signs. He indicated that a monument sign is at ground level. It was his belief that Mr. DeRose's comments related to the availability of sign panels on the freeway pylon signs. Mr. DeRose was suggesting that when the Council deals with his particular application, the Council would consider his proposal to either increase the size of the panel on the existing freeway pylon sign, or allow for the addition of a new freeway sign.

Senior Planner Marlott clarified that the Planning Commission will have ongoing discussions regarding the general sign ordinance. He indicated that a PUD development can write the sign rules; noting that the DiNapoli Shopping Center development has two freeway signs with eight users on each sign. This exceeds the one freeway sign, and the six user limit currently in place. He said that this discussion can take place in the future.

Council Member Sellers said that in reading through the minutes of the Planning Commission discussions, he wondered why it resulted in a 3-3 vote. He stated his support of staff's original recommendation of 750 feet. He said that he looked at the nine parcels that would be added if the Council approved 750 feet as opposed to 600 feet. It was his belief that it would be unlikely that there would be a desire to include freeway signage. He felt that implementing the 750 foot distance from freeway right-of-way would save future reviews; noting that the Council wants to emphasize its desire to move forward with economic development. He felt the City would be doing itself a good service if it was to approve the 750 foot distance.

Council Member Grzan stated that he would not support the 750 foot distance because he has a sense that the community is conservative with respect to aesthetics. He expressed concern with the proliferation of signs; especially along the freeway. It was his belief the City's General Plan alludes to the conservative aesthetic nature of the gateways, and does not want to see a proliferation of signs that detracts from the beauty of Morgan Hill. He supports removing economic inhibitors, but not at the expense of the aesthetics that makes this community unique. It was his belief the Planning Commission did a good job in its recommendation of 600 feet; a significant move from the existing 200 feet, and would bring in a number of eligible businesses to participate in signage. If the 750 feet were to be approved, the City would be asking for a proliferation of signs that would detract from the uniqueness of Morgan Hill. Therefore, he would not be supporting the 750 foot recommendation. He supports the 600 foot distance as well as the continued discussions at the Planning Commission level, regarding the other concerns raised. The outstanding items are to return to the Council for further discussion.

Council Member Sellers noted that there is no discussion about how many signs would be constructed. There is discussion about which businesses would be allowed to advertise on freeway signs. What is being reviewed is who might be eligible to go on the signs that would be made available. Approval of the 750 foot distance would give additional flexibility to the process, and give more eligibility to businesses located adjacent to the freeway. He noted that staff studied the issue and tried to figure out a reasonable distance from the freeway. In looking at the Planning Commission minutes, Commission members were split. He noted that the Commission conceded to the shorter distance. It was his belief

that the three Planning Commissioners who supported the 750 foot distance had stronger arguments; noting that they were the same arguments laid out by staff.

Council Member Lee said that in reading through the Planning Commission minutes, and reviewing the maps provided on where the limits would fall as far as 600 feet versus 750 feet, she did not know if the concern was about the clutter of signs, or how far back the City should allow businesses to have freeway signage. In looking at the distance on Dunne Avenue, 750 feet would go back to Murphy Avenues. She felt that this distance was a little far back in terms of having freeway signage. She felt that the recommended 750 feet seems further than what may be deemed freeway accessible. She noted that there is a question of whether this distance would be pushed back further. She supported the 600 foot distance as it makes sense.

Mayor Pro Tempore Carr said that in reading the staff report and the Planning Commission minutes, he is less concerned about the proliferation of signs. As written, it was his belief the ordinance would limit the proliferation of signs from taking place. He was pleased to hear the Planning Commission would be addressing capping the number of signs because the Council may need to talk about this. He said that the issue is about who would be allowed signage on the existing freeway signs. As PUDs develop, the Council will determine the rules that will be applied to the individual PUDs, and where a new freeway sign might be allowed to be constructed. He stated that his initial concern was also about the Murphy Avenue properties. The Council needs to keep in mind that should an application for rezoning of properties come forward, the Council would need to discuss what this would mean for freeway signage. He noted that increasing the distance to 750 feet on the east side of the freeway would not increase the number of eligible parcels because of zoning, and not being able to meet the recommended requirements. He said that the Murphy Avenue corridor becomes less of a concern for him. He noted that the 750 foot distance would include additional properties in the Cochrane Road corridor; however, he does not know the future of the properties. It was his belief that any commercial development in this area would necessitate freeway signage, or it would not be a viable piece of property. If not approved at 750 feet, he felt the Council would be discussing the distance, and freeway signage at a future meeting(s).

In response to Council Member Lee's question, Senior Planner Marlott clarified that if a small corner of a property is within whatever distance the Council adopts, all of the property is eligible for freeway signage.

Council Member Grzan noted that the Council has staff's concurrence with the Planning Commission's recommendation of 600 feet, and that this distance meets the Council's objectives. He did not believe there was a need to go beyond the recommendation of 600 feet at this time.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1822, New Series as recommended by the Planning Commission at 600 feet.*

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council **Introduced** Ordinance No. 1822, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, AMENDING CHAPTER 18.76 (SIGN CODE) BY MODIFYING THE ELIGIBILITY***



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***REQUIREMENTS FOR FREEWAY SIGNS AND ESTABLISHING A PROCESS TO ALLOW AN OFF-SITE BUSINESS TO BE LOCATED ON A FREESTANDING MONUMENT SIGN (ZA 07-03: CITY OF MORGAN HILL – OFF-SITE SIGNS) by the following roll call vote: AYES: Carr, Grzan, Lee, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.***

## ***City Council Action***

### **OTHER BUSINESS:**

#### **12. FRIENDS OF THE MORGAN HILL LIBRARY ADDITIONAL PROPOSED ART**

Carol O'Hare, President of the Friends of the Morgan Hill Library, indicated that they have returned to request Council approval of additional pieces of art for the new Morgan Hill Library. She stated that the art pieces are being funded by the Friends of the Morgan Hill Library's Beyond Books Campaign. To date, they have raised approximately \$120,000, and that they will continue with their fundraising campaign in order to reach their goal of raising \$180,000 for art, clocks and other equipment for the library. She informed the Council that Zoe Gustlin presented the proposed art pieces before the Library, Culture & Arts Commission who are recommending Council approval. Following Ms. Gustlin's presentation, she would be requesting Council approval of the wording for the plaque(s).

Zoe Gustlin stated that she is before the Council with the second and final package of art projects for the Morgan Hill Library. She said that she is happy with what the Friends of the Morgan Hill Library have come up with as the art pieces would add to the library, and will be spectacular art pieces to see. She informed the Council that they found a skilled sculptor/professor from San Jose State University, David Kimbel Anderson. She indicated that Mr. Anderson is building the art sculpture piece, using poplar, sycamore and oak leaves, and will implement stars and moon designs. The second piece of art will be a mural on a wall that will be located in the children's section of the library, and that the theme will be space. The mural will include the sun, planets, the Milky Way, a comet spaceship, dolphins, etc. She informed the Council that the back of the chairs located in the children's room will include cut out stars and moons in order to tie into the mural art work. The adult room will have the same configuration of wall space as the children's room, and will include quotes to be selected by library staff that would be appropriate for the library. She indicated that the fourth piece of art work will be the donor wall that will include a brass tree with branches; identifying the names of the donors, businesses, in memory of individuals; and will include poppy jasper to make the art piece look like the marble parts of the trunk of the tree. Being proposed is the inclusion of a few stars in the sky above the tree; identifying major donors.

**Action:** *On a motion by Council Member Grzan, and seconded by Council Member Lee, the City Council, on a 4-0 vote with Mayor Tate absent, Approved the Four Art Projects for Inclusion in the New Library Building Project.*

Ms. O'Hare informed the Council that the Friends of the Library discussed naming opportunities for some of the rooms in the past. She indicated that several large donors would be eligible to have a name on a room. She requested Council approval of the wording on the plaques for the library rooms and the

Beyond Books Campaign logo. The other plaque will be a bronze sculpture that will sit outside the library. The plaque will have the name of the piece “Once Upon a Mushroom,” the artist name (Evelyn Davis), the sponsors, and the year; as well as the Beyond Books campaign logo. In response to Council Member Sellers question, Ms. O’Hare informed the Council that Mayor Tate has been involved every step of the way.

Mayor Pro Tempore Carr opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Council Member Grzan and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Tate absent, **Approved** the wording for naming of certain rooms, the plaques, and the use of Beyond Books logo on the plaques*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

#### **ADJOURNMENT**

There being no further business, Mayor Pro Tempore/Vice-Chairman Carr adjourned the meeting at 8:15 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**

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**CITY OF MORGAN HILL  
JOINT REGULAR CITY COUNCIL AND  
REGULAR REDEVELOPMENT AGENCY MEETING  
MINUTES – APRIL 4, 2007**

**CALL TO ORDER**

Mayor/Chairman Tate called the meeting to order at 7:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Grzan, Lee, Sellers, and Mayor/Chairman Tate

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**INTRODUCTIONS**

The following promoted City employees were introduced by Police Chief Cumming: Troy Hoefling, Sergeant; Bill Norman, Corporal; Shane Palsgrove, Sergeant; and Mindy Zen, Corporal

Maintenance Supervisor Beale introduced new City hires: Sergio Marquez, Groundskeeper; Ismael Montes, Parks Maintenance Worker I; and Juan Zamora, Parks Maintenance Worker II.

**PROCLAMATIONS**

Mayor Tate presented a proclamation to Police Chief Cumming; Idalia Echegoyen, Dispatcher; and D'Arcy Gallagher, Dispatch Supervisor; proclaiming April 8-14, 2007 as *National Telecommunicators Week*.

Police Chief Cumming presented Idalia Echegoyen with a proclamation as the 2006 Dispatcher of the Year Award recipient.

**RECOGNITIONS**

**CITY COUNCIL REPORT**

Mayor Tate deferred his report as he recently returned from vacation and is just catching up with City business.

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## **CITY COUNCIL COMMITTEE REPORTS**

Council Member Grzan indicated that the Utilities & Environment Committee met this afternoon and found that the Committee will need to meet several times, over the next two months, regarding a number of issues. He stated that the Committee will be reviewing an extensive environmental plan as well as reviewing water/sewer rates. He said that the Committee will be bringing back recommendations to the Council soon.

Council Member Sellers said that the Community & Economic Development Committee met this evening. The Committee received a report/presentation from the Chamber of Commerce regarding potential changes to the City-Chamber's relationship in the development of economic development activities. The Committee will return later this month to the Council to discuss the process and in May, return with recommendations on how to evaluate this proposal moving forward as part of the budget process.

## **CITY MANAGER REPORT**

City Manager Tewes reported on three items:

1. City Employees. He stated that it was a pleasure to introduce new employees. He said that during the budget process, the Council authorizes a specified number of positions. He said that with any larger organization, there are often turnovers. He was pleased that the City was able to fill positions in the parks crew prior to the spring/summer season when the community expects its parks and parkways to be maintained. He said that there are occasional vacancies within the police department. These vacancies arise when there are promotions from within the department that creates opportunities below. He said that of the 35 sworn positions authorized by the Council, 34 are currently filled, and that the City conducts continuous recruitments for police officers and dispatchers. He encouraged individuals to apply for these positions.
2. Consent Calendar. Item 1 – the City received favorable bids for the construction of the outdoor sports center that includes artificial fields, parking lot, and restroom improvements. The bids were so favorable that it is staff's belief that \$1 million may be returned to the park impact fund. He clarified that the recommendation under Consent Calendar Item 1 includes this item. He informed the Council that item 1 is a joint meeting of the City Council and the Redevelopment Agency. He requested the Council pull item 8 from the Consent Calendar in order to hear staff's recommendation, and to receive public comments regarding the adoption of the ordinance that establishes new regulations relating to the proximity of freeway signs. He indicated that in the past week, City staff received a letter from an interested property owner raising a series of issues. He stated that the City Attorney would appreciate the opportunity to review the issues before the Council takes final action on this matter. Staff recommends that it be allowed to return to the Council at a subsequent meeting following the City Attorney's review.
3. Group Homes. He indicated that at the last Council meeting, he was asked to provide an update to the Council on issues relating to the establishment of two new group homes in the northern part of the community/Madrone Area on Taylor Avenue and Ginger Way. He stated that the Department of Developmental Services has authorized contracts with non profit agencies to

establish group homes that would serve six or fewer individuals. He noted that under State law, the City cannot treat such uses any differently than it would treat any other single family use. He clarified that the City cannot establish special regulations for group homes. However, the City can require the group homes to meet all the requirements imposed on any other single family residence. As of this afternoon, plans have been submitted, reviewed, and have been resubmitted. He stated that no building permits have been issued for the two facilities as of 5:10 p.m. this evening. He addressed the nature of the two facilities: 1) A residential care facility for the elderly where care, supervision, and assistance will be provided along with the activities of daily living such as bathing and grooming. Also, to be provided are incidental medical services under special care plans. The facility is proposed to provide services to individuals 60 years of age and older; and individuals under the age of 60 with compatible needs. 2) An adult residential facility. This is a facility that provides 24-hour non medical care for adults ages 18-59 who are unable to provide for their own daily needs. Adults may be physically handicapped, developmentally disabled, and/or mentally disabled. He advised the Council that there was to be a meeting in the neighborhood to be attended by State regulators, non profit operators and the neighbors in order to learn more about the types of facilities, how they would be operated, and to hear the neighbors' concerns. State staff indicate that a number of concerns were raised by the neighbors, some of which the State can address (e.g., issues relating to parking). It was the view of the state representative that the neighbors were still opposed to the location of these facilities, regardless of the State exemption. It was his understanding that there will be subsequent meetings to address the issues that can be addressed.

### **CITY ATTORNEY REPORT**

City Attorney Kern addressed the State law as it relates to group homes, and what a city is authorized to do. As a general law city, the City derives its powers from the State constitution and statutes. In 1969, the State passed the Lanterman Mental Retardation Act which implemented a state-wide policy that ended institutionalization of the mentally and physically disabled individuals, and attempted to integrate them back into society. Subsequently, there have been numerous state statutes that have passed to try and implement this type of program. In addition, federal laws have been passed to try to integrate handicapped and mentally/physically disabled individuals into society. In 2000, a State initiative (Proposition 36 – the Substance Abuse and Crime Prevention Initiative), was passed that included substance abusers. The effort was not to place substance abusers in jail, but to integrate them back into the community through halfway houses and group homes. She informed the Council that the Welfare and Institutions Code, Section 5116, has been reviewed by the courts and that the courts have ruled on its meaning; determining that it applies to both General Law Cities and Charter Cities. She said that it has been made very clear by the legislature and by the courts that the City is preempted from having any regulations over these group homes if they fit within the category as outlined in Section 5116. She stated that the regulations lie with the State licensing division; noting that these homes are licensed. She indicated that the State is the governmental avenue to whom residents can express their concerns. She clarified that the City has the authority to handle building permits or investigate nuisance issues similarly to what is done for other single family residences.

Mayor Tate noted that citizens have an administrative and political recourse through the State (e.g., Assemblyman John Laird, and/or State Senator Abel Maldonado).

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**OTHER REPORTS** - None

**PUBLIC COMMENT**

Mayor/Chairman Tate opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

***City Council and Redevelopment Agency Action***

**ADOPTION OF AGENDA**

**Action:** *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Lee, the City Council/Redevelopment Agency Board unanimously (5-0) **adopted** the agenda as printed.*

***City Council Agency Action***

**CONSENT CALENDAR:**

Council Member Lee requested that items 1 and 2, and Council Member Grzan requested that item 1 be removed from the Consent Calendar. City Manager Tewes recommended that item 8 be pulled from the Consent Calendar.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0) **Approved** Consent Calendar Items 3-7, as follows:*

3. **APPROPRIATE FUNDS FOR SUBSEQUENT REIMBURSEMENT AGREEMENT WITH LATALA FAMILY LP FOR LANDS OF LATALA**

**Actions:** ***Recognized** Additional Revenues and **Approved** the Appropriation of Funds for the Subsequent Reimbursement Agreement with Latala Family LP for Lands of Latala as Follows: 1) \$20,314.73 Increase 650-5710-37664 (Water Fund); 2) \$20,314.73 Increase 650-5710-42999 (Water Fund); 3) \$13,800.13 Increase 640-5900-37663 (Sewer Fund); and 4) \$13,800.13 Increase 640-5900-42999 (Sewer Fund).*

4. **RESOLUTION APPROVING A RISK MANAGEMENT PROGRAM**

**Actions:** ***Adopted** Resolution No. 6089, Approving a Risk Management Program.*

5. **FINAL MAP APPROVAL FOR MALLORCA (TRACT 9803)**

**Actions:** *1) **Approved** the Final Map, Subdivision Agreement, and Improvement Plans; 2) **Authorized** the City Manager to Sign a Subdivision Improvement Agreement on Behalf of the City, Subject to Review and Approval by the City Attorney; and 3) **Authorized** the Recordation of the Final Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*

6. **COUNCIL RESOLUTION SUPPORTING GRANT FUNDING FOR BUTTERFIELD BOULEVARD EXTENSION**  
*Actions: Adopted Resolution No. 6090, Supporting the Application for Grant Funds for the Extension of Butterfield Boulevard, Between Tennant Avenue and Watsonville Road.*
7. **ADOPT ORDINANCE NO. 1821, NEW SERIES**  
*Actions: Waived the Reading, and Adopted Ordinance No. 1821, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING DESIGNATION FROM PUD (HC) (PLANNED UNIT DEVELOPMENT-HIGHWAY COMMERCIAL) TO HC (HIGHWAY COMMERCIAL) ON A 0.66-ACRE PARCEL (APN 726-43-004) ADJACENT TO AND SOUTHWESTERLY OF THE WALNUT GROVE DRIVE/LAUREL ROAD INTERSECTION (APPLICATION NO. ZA-06-06: LAUREL – JIFFY LUBE).***

### ***City Council and Redevelopment Agency Action***

1. **AWARD CONTRACT FOR CONSTRUCTION OF OUTDOOR SPORTS CENTER AND APPROVE/AMEND CONSULTANT AGREEMENTS FOR PROFESSIONAL SERVICES**

City Manager/Executive Director Tewes announced that this item is a recommendation to award a contract to construct two synthetic artificial fields, construct the parking lot improvements, and to build the restroom and ancillary improvements around the fields at the outdoor sports center. This recommendation would meet the Council's goal of providing space at the outdoor sports center to the community, and not just to the private organization(s) that use the facility on weekends. He informed the Council that staff sought and received several bids; all coming in below the engineer's estimate. Staff is recommending the Council/Agency Board award the contract to the low bidder.

Council/Agency Member Lee said that it appears as though the construction contingency is 38% of the proposed contract based on the numbers provided by staff. She inquired whether this percentage was a typical amount for contingencies.

Public Works Director Ashcraft responded that a typical contingency is 10%. However, it is staff's belief that there will be \$1 million remaining once the project is completed to put back into the park development fund. He informed the Council that enhancements will be included; however, there are items that take place during construction that will cost additional monies.

City Manager/Executive Director Tewes said that the 38+ acres were purchased over a three year period for approximately \$7.6 million by the Redevelopment Agency. He clarified that this is the first phase of a master plan previously approved by the Council for the full 38-acres. Although not yet funded, there is a master plan that suggests that the remaining 20 acres should be developed with fields.



Council/Agency Member Grzan noted that this project is being funded by Redevelopment Agency (RDA) dollars; indicating that RDA dollars are to be used to alleviate blight within the defined RDA zone. He requested an explanation as to how this project would alleviate blight in the downtown.

City Manager/Executive Director Tewes said that the City is required to use RDA funds for the purposes of the redevelopment plan that addresses a project area; clarifying that these funds are not only to be used in the downtown. He stated that the Council, acting as the Redevelopment Agency, adopted a resolution making all requisite findings in July 2001. He indicated that findings needed to be made to acquire the property. The City is able to use RDA funds because the City addressed the identified needs contained in the RDA plan approved by the Council and the voters. An identified need was the lack of recreational facilities as a blighting influence on the project area. He stated that by building this facility, the City is addressing a need identified in the RDA plan for additional recreational facilities.

Council/Agency Member Grzan inquired whether additional recreational facilities are being constructed to alleviate blighted conditions.

City Attorney/Agency Counsel Kern stated that all the plans and programs in the RDA plan are aimed at alleviating blight. This particular project was included in the RDA implementation plan to alleviate blighting conditions. Whether it eliminates all blight in all areas appears to be the concern.

Mayor Pro Tempore/Vice-chair Carr noted that the item before the Council/Agency Board is about the approval of a bid. He was pleased to see the bid is 22% below the engineer's estimate of January 2007, and that the City will be saving some of the anticipated costs for the project; returning monies to the parks fund.

Public Works Director Ashcraft informed the Council that staff has checked the references of the low bidder and found that the references have come back very positive. Although the contractor has not performed work in Morgan Hill, they have done a lot of work in neighboring cities. It has been indicated that the contractor did very good work on a similar project, delivered the work on time, and did not have an extensive list of change orders. Therefore, staff is pleased with the low bid received. He noted that all bids submitted were below the estimate as a result of a good bidding climate, and well understood-design plans. It was his belief that the list of enhancements will help control costs in the operations of the site, make the site more user friendly, and attract more individuals to the facility. Some of the enhancements will lower the long term operations and maintenance the costs of the facility.

Council/Agency Member Grzan reiterated his question as to whether this investment would alleviate the blighted findings within the downtown. He was not sure if this strategy alleviates blight because he does not see a concrete linkage between this facility resulting in a corresponding construction project that would alleviate blight in the downtown. He understands that the City is spending \$13.6 million on this project, and does not believe the millions of dollars being placed on a facility located miles away from the project alleviates the blighted conditions as defined in the downtown/project area or in the plan. He was looking for someone to explain the relationship between this investment, and a corresponding reduction in the conditions in the findings of the project area.

City Manager/Executive Director Tewes addressed the history of the project and the history of the RDA plan. He stated that in the late-1990s, the Agency proposed an RDA Plan, and found that there was

significant public support for a variety of public facilities. The Agency ultimately amended the plan; identifying in the plan that the lack of recreational facilities was a blighting influence. The plan went to a referendum and the voters overwhelmingly approved the RDA plan that contained this finding. In 2001, the RDA was presented with the opportunity to acquire the property, and had to make formal findings that provided the linkage being sought by Council/Agency Member Grzan. These findings had to be made so that any subsequent expenditures complied with RDA law. He indicated that the Council directed staff to work with CYSA on leasing; noting that the property was leased. The Council/Agency Board asked staff and the Parks & Recreation Commission to develop a master plan. Approximately 13 months ago, at a Council goal setting retreat, the Council indicated that the City needs to move forward with converting the former soccer complex into a facility that would be useful to the community. He indicated that a number of council members suggested that the first phase of the project should include synthetic fields as these would allow the City to meet the community's needs, as well as the continued use by the CYSA organization. At that time, the Council established some goals that required the City to move forward. He stated that these goals were met at a workshop, and that a Council policy decision was made about whether or not to proceed with the project. He said that a few months later, the Council/Agency Board gave staff the direction to design and bid this phase in accordance with its policy direction at the time. All actions stem from the formal legal findings that were required to be made, and were in deed made by the RDA in 2001.

Council/Agency Member Grzan appreciated City Manager/Executive Director Tewes' historical and legal background on this project. However, he did not believe it answered his fundamental question as to whether the investment of these dollars into this facility would result in an equal/or a reduction in the findings within the project area, and the reduction in blight. Would this particular project encourage individuals to build and develop within the downtown in order to alleviate the blighted conditions found in the downtown?

Mayor/Chairman Tate noted that the Council/Agency Board is not just addressing physical blight. The Council/Agency Board is talking about crime, and building recreational facilities. He indicated that page 2 of the staff report states that the foregoing will remedy conditions which are conducive to crime and juvenile delinquency in the project for the benefit of the health, safety and welfare of residents, employees and taxpayers of the project area, and the immediate neighborhoods. It is not just about physical blight, but about how you prevent crime, and keep youth gainfully/positively occupied. If they are not, he felt that this was a form of blight.

Council/Agency Member Grzan felt that it needs to be indicated as to what percentage of crime occurred prior to the construction of the facility. He felt that an evaluative process needs to be implemented on the City's investment.

Mayor Pro Tempore/Vice-chair Carr noted that findings were made, and that there was a ballot measure that was passed overwhelmingly by the voters. There was public input and an extensive visioning process that brought the community together to talk about what the RDA would be doing with funding. He indicated that this project was one of the items included on the list that went to the ballot. He stated that he previously supported Council/Agency Member Grzan's inclusion of turf fields in the project in order to get more community use of the fields. He noted that the findings are in front of the Council/Agency Board. He felt that relating this back to the downtown would be a false premise because it is a project area that the RDA deals with, not just the downtown.

Council/Agency Member Grzan noted that it was stated that the sports complex would promote economic growth and development in the project area by creating jobs, and stimulating private investments in the area. He inquired whether the City would be measuring this outcome. He noted that there is an investment of \$13.6 million, and that according to the findings, the City is supposed to see some reciprocal economic growth and more jobs as a result of this action.

Council/Agency Members Sellers indicated that there are quantitative and qualitative factors to which you can measure. He stated that he was satisfied the City has effectively done both. Qualitatively – the City has had the hotel owners and other businesses come to the Council to state that without the sports complex they would not be in business. You can also look at this project in terms of crime. Anytime you look at crime, you can look at it in terms of prevention or active enforcement. Would there have been more crime in the community without the complex, or will there be less crime in the future? He was convinced that you can point to this, and that it is a substantive result. The qualitative issues are equally important in terms of the type of community that is being built. He felt that recreational projects enhance the quality of life for everyone.

Council/Agency Member Sellers said that one of the most venerable businesses in town produces sod and is well respected throughout the industry in this regard. This business owner weighed in with some interesting observations about synthetic fields in terms of what they have heard from the industry. He said that the City recently heard issues about health concerns about a public facility at a community center in San Jose, and other areas associated with an outdoor fountain. Similar issues have come up regarding synthetic turf. He inquired whether there were safeguards in terms of the installation of the facility where the City will be evaluating the facility to ensure that safeguards are in place to ensure the long term health and safety of participants. He indicated that there were suggestions made by members of the public on ways to do so, and wanted to make sure the City is doing so as part of the installation as well as in the maintenance and operation of the facility.

Public Works Director Ashcraft said that should the Council/Agency Board approve the staff report this evening, it would substantially increase the amount of time a contract construction inspector can spend on the project. Staff wants to make sure that the synthetic turf field is installed per the manufacturer's suggestion. It was his belief there would be the appropriate amount of inspection time dedicated to the project; resulting in a good project. Should the contractor not be doing a good job at any point in the process, there will be a representative from the City on hand to tell him to improve the project, or the City would not accept the project. He said that the letter referenced by the Grass Farm was produced at a seminar just for turf farms. He said that the research conducted by staff suggests that synthetic turf is a good product. If constructed appropriately, you can achieve many more hours of play on the same surface with synthetic turf than you can with natural turf. He noted that it is a City goal to increase the hours the fields are available.

**Actions:**      *Council/Agency Member Sellers made a motion, seconded by Mayor Pro Tempore/Vice-chair Carr, to: 1) Approve Project Plans and Specifications; 2) Award Construction Contract to Interstate Grading and Paving, Inc. in the Amount of \$5,987,000; 3) Authorize Contingency Funds Totalling \$2,251,548 for this Project; and 4) Authorize the City Manager/Executive Director to Execute Various Consultant Agreements and*

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*Amendments for Professional Services During Construction per Memos; Subject to Review and Approval by the City Attorney/Agency Counsel.*

Council/Agency Member Lee inquired why the property was not brought into the RDA plan area if it was known in 2001 the City would be purchasing the property, and planning to construct a sports complex.

City Manager/Executive Director Tewes said that it was not necessary to bring the land into the project area as the City used the provisions of state law that allow resources to be used outside the project area as long as it is a benefit to the project area; noting that the findings are contained in the resolution.

Council/Agency Member Grzan indicated that it was stated that hotels could benefit from the outdoor sports complex; noting that the hotels addressed by Council/Agency Member Sellers are located outside the project area. It is being stated that the sports complex will promote economic development and development in the project area; stimulating private investment in the area. He questioned how the City can measure this, and how will the City be able to state that a \$13.6 million investment resulted in terms of investment dollars, number of jobs, a reduction of crime rate, etc. If the City is going to state that the City's investments are going to do these things, he requested that staff return with quantifiable measures. He expressed concern with the strategy as he did not believe it gets the City where it wants to be. He acknowledged that the strategy provided the City with recreational facilities. He has no questions that children will play on the fields. He did not believe this strategy promotes economic growth, and stimulates private investment within the project area. He stated that he would not support/approve the motion this evening based upon his comments.

City Manager/Executive Director Tewes said that these are the same type of findings that were required to be made when the Agency constructed the Community & Cultural Center, the Centennial Recreation Center and the new library. When the Council/Agency Board discussed this project at the retreat two years ago; it suggested the City move forward with synthetic fields, staff indicated that the findings had previously been made during land acquisition. Therefore, this has been a part of a long string of Council/Agency policy decisions. He stated that it is not possible to directly link the public investment to any specific private investment. However, it was his belief that success breeds success. The increase in investment already observed in the project is attributed to the efforts of the RDA to provide quality public facilities. He indicated that he hears stories every week about how individuals have invested in the community because of their appreciation of the public investments that have been made to date.

Vote:            *The motion carried 3-2 as follows: Ayes: Carr, Sellers, Tate; Noes: Grzan, Lee.*

## ***City Council Action***

### **2. OUTDOOR SPORTS CENTER RENTAL RATES**

City Manager Tewes indicated that the recommendation before the Council is from staff and the Parks & Recreation Commission that follows the direction provided by the Council/Agency Board on January 17, 2007. When the Council/Agency Board authorized staff to proceed with the design and construction of the project, it also established goals for cost recovery and usage of the facility in order to meet the

goals of having community usage. He stated that the Council/Agency Board asked the Parks & Recreation Commission to return with specific rates for usage of the fields, consistent with the Council/Agency Board's established policies for the cost recovery goals. He indicated that these are the recommendations before the Council this evening.

Mayor Tate opened the floor to public comment.

Don Mott, representing Orchard Valley Youth Soccer League, informed the Council that this afternoon Mr. Rymer e-mailed him the proposed rental rates as recommended by staff. After talking to representatives from the Pop Warner Football league and the president of the Orchard Valley Soccer League, they find the rental rates to be acceptable as they are reasonable. It was his belief that they can get the maximum use out of the synthetic turf fields as a result of utilizing these rates. He addressed the note located at the bottom of the rental rate sheet that states that in order to qualify for the resident non profit rate; an organization must certify that 85% of the membership resides in Morgan Hill. He informed the Council that this requirement would place the Orchard Valley Youth Soccer League out of the running for the use of the fields at a resident-non profit rate. He indicated that the Soccer League is an amalgamation of two previous soccer leagues: one from Morgan Hill and one from Gilroy. He informed the Council that their membership consists of 1,150 youth players; indicating that there is approximately 61% residency from Morgan Hill, and that the remainder of the players come from San Martin, Gilroy and a few from south San Jose. He stated that a soccer complex located in Santa Clara utilizes a similar residency requirement; however, the residency requirement is 50%. He requested the Council reconsider the 85% residency requirement, and bring the percentage down to a rate that will allow utilization of the soccer fields.

No further comments were offered.

Director of Recreation & Community Services Rymer stated that at the January 2007 meeting, the Council indicated a 15% cost recovery in rates for organizations. At that point, staff looked at 60% usage of all available hours (5,100 hours per year). He informed the Council that staff used a 50% capacity and based the number from this. This resulted in a rate of \$4 per hour for the resident-non profit teams. He stated that the Parks & Recreation Commission recommends doubling this amount for non resident-non profit teams. Residents would be charged \$21 per hour (75% cost recovery), non residents would be charged full cost recovery of \$28 per hour, and for profit rates would be twice the amount of full cost recovery.

Council Member Sellers inquired whether the 85% non profit residency requirement was a policy decision, or was it merely a guideline/general rule.

Mr. Rymer said that the history behind the 85% goes back to July 2006 when the Council conducted a public hearing on the rental rates for the sports fields. At that time, the recommendation from the Parks & Recreation Commission was to move the cost recovery rate from 65% to 85%. In order to remain consistent with this, staff applied the same criteria. He clarified that there was no intent to exclude user groups.

Council Member Sellers said that should the Council believe Mr. Mott's request was reasonable, it could be stated that 50% residency requirement would be acceptable as long as the Parks & Recreation

Commission has the opportunity to evaluate this percentage rate, and return with issues that might arise should the policy be changed.

Mr. Rymer informed the Council that a couple of the Parks & Recreation Commissioners were strong in their support of the 85% residency requirement. He indicated that staff has not surveyed all user groups to determine how many would fall within the various percentage of the residency requirements. Staff would need to determine user group's residency make up before taking the discussion to the Parks & Recreation Commission. However, the Council could adopt the rates this evening.

Council Member Grzan indicated that he would agree to approve the recommendation as outlined by staff. However, he recommended that Mr. Mott and other user groups go back to the Parks & Recreation Commission to address their concerns. Should the Parks & Recreation Commission believe it wants to make another recommendation at a later date, they can return to the Council to indicate that they reconsidered based on the additional input received; recommending/not recommending changes. He felt uncomfortable in making any changes at this time based upon the recommendation and review of the Parks & Recreation Commission.

Mayor Tate indicated that this is a unique situation as the Council would like the fields to be utilized by the City's residents; giving Morgan Hill residents priority. However, the City has a great sports field because there is competition and integrated teams within the area. It was his belief the City should find a way to accommodate the local youths playing in the Orchard Valley Youth Soccer League.

Mayor Pro Tempore Carr stated that he has been a strong advocate to fund priorities for local youths. It was his understanding that Orchard Valley Youth Soccer League is the soccer organization in Morgan Hill. If the City has a policy that excludes Orchard Valley, the City is excluding Morgan Hill's youth; noting that there are approximately 600 Morgan Hill youth playing soccer with Orchard Valley such that should finances not work out, they may not have access to the site. He felt that this is a unique situation and that the Parks & Recreation Commission needs to take a look at the residency percentage. He did not know if the percentage needs to drop all the way down to a 50% residency requirement. He felt that 60% may be the appropriate residency percentage with a goal of increasing this percentage over a period of time.

**Actions:**      *On a motion by Council Member Grzan and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Council Member Lee abstaining, Approved the Proposed Outdoor Sports Center Rental Rates Effective October 1, 2007, Through December 31, 2008; requesting that the Parks & Recreation re-evaluate the residency percentage.*

**8.      ADOPT ORDINANCE NO. 1822, NEW SERIES - ZA 07-03: CITY OF MORGAN HILL – OFF-SITE SIGNS**

Mayor Tate opened the floor to public comment.

Frank DeRose indicated that he is representing the DeRose Development LLC that owns approximately 8 acres of land in the Walnut Grove area. He reiterated the DeRose family's opposition to Ordinance No. 1822. Should the Council decide not to adopt Ordinance 1822, the DeRose family is ready to sit

down with the City and all other interested parties in the Walnut Grove area to discuss how best to address signage in this area. He stated that the DeRose family believes the signage issues relate to the shared freeway and monument signs along East Dunne Avenue that might serve the PUD. He noted that the Council received a letter from Joshua Safran, representing the DeRose family, this week.

City Manager Tewes informed the Council that it is staff's intention to evaluate the issues raised in the letter, and to bring the matter back to the Council for its consideration at a future date.

**Actions:**      *On a motion by Council Member Grzan and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **continued** the adoption of Ordinance No. 1822, New Series, to April 18, 2007.*

### ***City Council and Redevelopment Agency Action***

#### **CONSENT CALENDAR:**

**Action:**      *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Grzan, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Item 9 as follows:*

9.      **REGULAR CITY COUNCIL AND REDEVELOPMENT AGENCY MEETING MINUTES OF MARCH 21, 2007**

**Action:** **Approved** the Minutes as Submitted.

### ***City Council Action***

#### **PUBLIC HEARINGS:**

10.      **ZONING AMENDMENT, ZA-07-04: CITY OF MORGAN HILL – DOWNTOWN PARKING EXEMPTION** – *Ordinance No. 1823, New Series*

Council Member Sellers stated that he has been advised that due to his home's proximity to part of this item, he would be stepping down and not voting on this item. He excused himself from the Council Chambers.

Community Development Director Molloy-Previsich presented the staff report on an ordinance that would extend the sunset date for an exemption to onsite parking requirements for commercial and office uses, and guest parking within the downtown area. She noted that the 2003 Downtown Plan calls for changing parking requirements in order to stimulate development in the downtown area. She said that a draft parking management strategy was prepared in 2005, but that there were still some uncertainties about the methodology and assumptions used in this study. Therefore, it was decided that instead of adopting permanent changes to the parking ordinance, the Council adopted a two-year exemption period while staff finishes the parking management strategy. Although staff has some information on parking in the downtown, staff does not have enough information. She indicated that the City will be updating the Downtown Plan, and working with property owners in order to further define their development for the

coming year or two. She stated that staff is recommending the Council extend the parking exemption for two-more years. It is anticipated that by that time, the Council will have adopted the Downtown Plan update, the CEQA document, the parking strategy, and any permanent implementing ordinances affecting parking for the downtown.

Mayor Tate opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Grzan and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1823, New Series.*

**Action:**        *On a motion by Council Member Grzan and seconded by Mayor Pro Tempore Carr, the City Council **Introduced** Ordinance No. 1823, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 18.50.027 BY EXTENDING THE SUNSET DATE FOR THE EXEMPTION FOR ON-SITE PARKING REQUIREMENTS FOR COMMERCIAL/OFFICE USES WITHIN THE DOWNTOWN AREA (ZA 07-04: CITY OF MORGAN HILL – DOWNTOWN PARKING EXEMPTION)** by the following roll call vote: **AYES:** Carr, Grzan, Lee, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Sellers.*

Council Member Sellers resumed his seat on the Dais.

## ***City Council Action***

### **OTHER BUSINESS:**

#### **11.    SANTA CLARA COUNTY LIBRARY'S MOVING PLAN FOR THE MORGAN HILL LIBRARY**

Special Assistant to the City Manager Spier indicated that the Council requested that the Santa Clara County Library present a moving plan in order to identify the timeline and procedure for moving the items from the existing library to the new library. She informed the Council that the project is on schedule to turn the keys over for the new Library to the County Library system on June 8, 2007. She informed the Council that Deputy County Librarian Sarah Flowers was in attendance to address the Council on how the move will come about.

Sarah Flowers, Santa Clara County Deputy Librarian, stated that the Santa Clara County Library staff is grateful that the City is building this beautiful new library, and that they are looking forward to moving in. It is their belief that the move will take approximately five weeks. She addressed how services will be provided during the time the library is closed. She informed the Council that a grand opening will take place on July 21. However, should the move be completed prior to July 21, a soft opening will be held. In response to Council Member Sellers' question, Ms. Flowers said that there will be an investment in new books and materials, over time. She felt that the library collection is a good size, and that instead of being full on shelves in the new library, the shelves will be  $\frac{2}{3}$  full.



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Mayor Tate opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Council Member Grzan and seconded by Council Member Sellers, the City Council unanimously (5-0) Received and Filed the Report by the Santa Clara County Library Regarding Moving Plans into the New Morgan Hill Library Building.*

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **12.    FRIENDLY INN AND EL TORO YOUTH CENTER BUILDING POLICY STATEMENTS**

Director of Recreation and Community Services Rymer indicated that on March 21, 2007, the Council conducted a workshop in regards to the goal relating to the public purpose for the Friendly Inn and the El Toro Youth Center building. He stated that the Council directed staff to return with policy statements for its consideration to help drive decisions in the future in terms of whom the likely tenants will be.

Mr. Rymer stated that staff recommends that the El Toro facility be dedicated to the community's youth and families; partnering with one organization or consortium of organizations who would deliver services to residents in the area. He informed the Council that one of the goals identified was to meet the needs of the youth that reside in the area. However, it is also important to realize that the building would be appropriate to serve the needs of all youth in the city. Focus would be given to educational assistance, youth leadership, recreation and other social services. The partner would receive a subsidized lease in order to operate this program on behalf of the City.

Mr. Rymer addressed the purpose of the Friendly Inn – to enhance the quality of community life. The City would agree to provide subsidized space for grassroots/non profit organizations. The groups would strive to meet identifiable community needs; realizing that the needs will continue to evolve over time. The Council would periodically review the needs to ensure that the tenants are meeting key concerns and issues within the community. He clarified that the uses are not intended to compete against the existing services being provided by the City. The City would be looking at the social service aspect in trying to meet other needs. He addressed the eligibility criteria for the use of the Friendly Inn. He informed the Council that he receive an e-mail from a representative with the South County Collaborative who has identified concerns in terms of the requirements being recommended by staff: 1) non profit status under the IRS or other appropriate designation; 2) that an agency is to be eligible for CDBG funding. He explained that the reason staff has identified this eligibility criteria is that it is an objective criteria that is already established that can be used to select future tenant. He felt it important to recognize that the eligibility requirements may eliminate some of the local organizations that may want to use the facility if they do not meet the second eligibility requirement being recommended this evening. 3) Demonstrate a history of working in the community; 4) ability to look at community needs and explain through a process how the agency would meet these needs; 5) consider how the organizations are helping meet the goals established by the Council; 6) looking at groups that plan to collaborate and partner with other organizations in order to leverage resources to reduce duplication of services; and 7) demonstrate a financial need to use the facility. He recommended the Council discuss these proposed policy statements.

Mayor/Chairman Tate opened the floor to public comment.

Erin O'Brien, Community Solutions, indicated that she looks forward to having conversations with City staff. She acknowledged that the El Toro Youth Center is a fabulous program, and is an asset to the community. She stated that Community Solutions is committed to doing everything it can to keep the program in the community; partnering with the City. She noted that a requirement to be eligible to use the Friendly Inn is that the majority of services are to be provided to Morgan Hill residents at the facility. She noted that a lot of agencies do a lot of good work, but it is done at citizens' homes. She requested the Council give consideration to this. She indicated that not all social service groups have 501c3 status, and felt that they are an asset to the community, meet a need, and could benefit from the use of the space. She indicated that there are many more service providers in San Jose than there are in Morgan Hill. If the City is looking to build the capacity and bring others to Morgan Hill, they may not have worked in the community before. If a commitment exists to provide services in the community, she would like to see the space opened to these agencies as well. She noted that Dina Campeau, South County Collaborative, addressed the financial need category in an e-mail to Mr. Rymer. It was her belief that the spirit of what the Council wants to do is appreciated and that it was her belief that the criteria would strengthen the community.

No further comments were offered.

Council/Agency Member Grzan inquired whether the 501c3 status is something the City has to have. He noted that some of the organizations may be able to assist the City in providing services to the community who have not had prior use of the facility.

City Manager/Executive Director Tewes said that the point of the recommendation is that the organizations are to be non profit organizations. A typical way to demonstrate this status is by a certificate under one of the sections of the IRS codes. As stated in the recommendation, it states "or other appropriate designation relating to non profit status."

Council/Agency Member Sellers expressed concern with the eligibility criteria as it relates to CDBG funding eligibility. It was his belief that the vast majority of the organizations would be eligible, and that they would be going through an evaluation process. It could be that the City finds that an organization is not CDBG eligible, but may add value to the community. He stated that he did not want to preclude such an organization. He recommended that CDBG funding eligibility be given significant consideration, and that history in the community will also be a factor in the evaluation process. He wanted to make it clear that these are to be factors in the evaluation process, but that the City needs to stop short of stating that if an organization is not eligible for CDBG funding, or has not provided services in Morgan Hill before, that they would be precluded from participating. This criteria could eliminate some organizations using the facility that might otherwise perform good work in Morgan Hill. He suggested the Council adopt staffs' recommended action, but to direct staff to soften these two criteria requirements; softening the requirements in terms of a priority preference. He clarified that an organization could apply should it believe it meets other criteria, and that they provide a value to the community.

Mayor Pro Tempore/Vice-chair Carr noted that it was discussed that preference would be given to organizations that directly deliver services in this facility. He noted that a lot of these services do not actually take place in the facility where the office might be. He recommended that this also be softened.

Mayor/Chairman Tate recommended that the item raised by Mayor Pro Tempore/Vice-chair Carr be softened to eliminate the word “at” and replace it with “...through use of...” He clarified that this recommendation would stipulate that services do not need to occur in the facility, but that an organization needs to use the facility in order to deliver the services.

**Action:** *On a motion by Council/Agency Member Sellers and seconded by Mayor/Chairman Tate, the City Council/Agency Board unanimously (5-0): 1) **Adopted** the Recommended Policy Statements for the Friendly Inn and El Toro Youth Center Building; incorporating the three changes discussed above; 2) **Directed** the City Manager/Executive Director to Meet with Community Solutions and Discuss Sustainable Budget Strategies for the El Toro Youth Center; 3) **Directed** the City Manager to Solicit Potential Tenants According to the Recommended Eligibility Criteria; and 4) **Directed** the City Manager/Executive Director to Recommend a Final List of Tenants for City Council/Redevelopment Agency Consideration by July 2007.*

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **13. LOAN REQUEST FROM EL TORO BREWING**

Executive Director Tewes advised the Agency Board that his daughter is employed by El Toro Brewing, and that the City Council’s policy suggests that even the appearance of potential conflicts needs to be recognized. He indicated that he has not participated in the preparation or in the review of this item. He stated that he will be recusing himself from this item. He excused himself from the Council Chambers.

Business Assistance and Housing Services Director Toy informed the Council that this item is a request from the owners of the El Toro Brewing Company for a \$400,000 loan. Should the Agency Board approve this loan, it would be the Director of the Business Assistance and Housing Services, with the assistance of the City Attorney, who would negotiate and prepare the agreement. He stated that staff would return to the Agency Board with the agreement for approval. He presented a background on the sale of the former police facility to El Toro Brewing. He said that the owners of the El Toro Brewing Company are requesting financial assistance to fill the gap between their construction financing and their final financial costs. It has been indicated that cost overruns are beyond the owners’ control and that they do not have the equity to fill the gap. He informed the Council that the owners have invested approximately \$1 million into the project that includes the purchase of the property. The owners of El Toro Brewing are requesting a short term, 5-year loan from the Agency. He indicated that the owners have tried to pursue other financing, but that they have been unable to acquire financing. The owners have indicated that time is of the essence. He stated that the project is eligible to receive Agency funding, and that it is consistent with assistance given to other projects such as the Gunther Brothers and Granary project located on Depot Street. He noted that when the City entered into the exclusive right to negotiate (ERN) agreement, as part of the transaction, the owners of El Toro Brewing indicated that they

would not request financial assistance for the project. However, this was part of the ERN agreement, and is not included in the Disposition Development Agreement (DDA). He informed the Agency Board that should it agree to approve the gap financing, there is adequate security for the loan with an interest rate of approximately 5.5%. It appears that the owners of El Toro Brewing would be able to make payments, and pay off the loan at the end of the five-year period. It is being recommended that the owners of El Toro Brewery seek refinancing in 12 months.

Agency Member Grzan noted that it is stated, in the staff report, that one of the conditions was that El Toro Brewing would not require any financial assistance from the Agency. He inquired as to the reason for the inclusion of this condition.

Mr. Toy responded that at the time the City considered the sale of the former police facility, the City received proposals from two developers with competing proposals. El Toro Brewing Company's proposal indicated that they could pay \$650,000 for the building, and not require additional assistance. The other proposal indicated that they could only pay the Agency \$100,000 for the building with a project cost of \$2.5 million. An alternate scenario from the second proposal was that they could pay the Agency \$350,000 for the building, but would need financial assistance. At that time, there was a discussion of whether the building was worth more than \$650,000. The owners of El Toro Brewing indicated that they would pay the City \$650,000 and would not ask for additional financial assistance. However, if they need to pay the City more, they may need financial assistance. The City approved the \$650,000 purchase price with no additional financial assistance.

Agency Member Lee noted that the staff report indicates the appraised value of the building is at approximately \$2.5 million. She inquired as to the date of the appraisal.

Geno Acevedo indicated that the appraisal was prepared in May 2005.

Mr. Toy clarified that the bank has appraised the building with the improvements at \$2.5 million, and that they are willing to loan \$1.9 million (75% loan to value). He stated that the actual cost of the project, if you include all items, is at \$3.2 million.

Agency Member Grzan requested an explanation on how the Granary and Gunther Brothers project became eligible for assistance, what were the conditions, and how was the loan request similar to this one.

Mr. Toy said that the loans are similar in the sense of basing it on the loan amount. The Granary loan was for the renovation of an existing building in the amount of a \$350,000 acquisition loan at 3% for a five year period. However, the Agency provided the Granary with a façade grant, fee financing and financing of improvements related to the dayworker center. The Gunther Brothers project will be new construction with Agency assistance in the amount of \$462,000 at 4% interest for a five-year period of which approximately \$350,000 is to be used for tenant improvements. He informed the Agency Board that the Agency also provided them with a façade grant of approximately \$110,000. He said that it could be that other businesses may come forward to request loan assistance. He said that the Agency can review loan requests on a case by case basis. He said that staff is looking at the El Toro Brewing as a DDA agreement for a specific project. Should the Agency Board agree to approve the loan, the DDA would need to be amended in order to provide the assistance. Staff is not proposing to modify any

existing commercial loans/rehab programs. He informed the Council that prime lending rates are at 7% - 7.5%. He felt that the Agency could charge the prime lending rate, but that staff looks at the City's borrowing rate plus ½% to handle the administrative costs related to the loan. Therefore, the City is not losing any money at the 5½% interest rate. He did not know if charging a higher interest rate would play into how the numbers would work. Should the Agency Board wish to consider a higher interest rate, staff could explore these discussions with the banks and El Toro Brewing.

Agency Member Grzan inquired how the City would work with the bank to ensure the City will be paid; noting that the bank will be looking to be paid as well. Should the bank not receive payment and they want to close on their portion, how this would affect the City?

Mr. Toy said that the Agency's loan would be in second position to the bank's loan. Should the bank foreclose on the loan, the Agency could carry the first loan in order to protect its position. Should the property go to auction, or should someone purchase the property, the sale price would cover the bank's note and the Agency's loan. He felt it important to note that this is a single use facility, and can only be used as a restaurant. Foreclosure would still result in having a restaurant in the downtown; a key condition of the Agency's desire to have an anchor tenant at one of the gateways to the downtown.

Chairman Tate opened the floor to public comment.

Geno Azevedo stated that the project represented to the City several years ago is what was delivered, and that what was delivered is better than what was initially conceptualized. He has approximately 50 employees, and stated that the business is exceeding their original projections; exceeding over \$600,000 in the first four months of operation. He informed the Agency that after having the project 80% complete, change orders started to mount rapidly. It was his belief that construction financing would be extended, but that he did not find out until towards the end that the financing would not be extended. He informed the Agency that he tried to seek conventional financing, but was unsuccessful because they were told the business was not a start up business or a new business. He is looking for total financing; filling the bridge for what he owes the contractor and what Heritage Bank will fund. If the loan is approved by the Agency, he would agree to meet with City staff and the bank to reach a mutually agreed upon agreement. Should the loan not be approved, it would result in complications to the business (e.g., further liens); resulting in the inability to secure any other type of conventional financing. He agreed to seek financing within 12 months, if so conditioned by the Agency. He felt that the business will qualify for a loan once additional equity builds up in the next few months in order to leverage the ability to refinance. He agreed to proceed with due diligence in seeking a loan; reporting back to the Agency on his ability to secure a loan.

No further comments were offered.

Agency Member Grzan agreed to approve a one year loan; directing the applicant to make every effort to find another agency to finance a loan. Should the applicant be unable to find another agency in the one-year time period, the Agency would look at other options. He expressed concern that one of the conditions of the project that El Toro Brewing stated at the time of the sale of the building was that they would not require financial assistance from the Agency; noting that this was stipulated as part of the agreement. He understands that circumstances change; therefore, he is recommending a one-year loan term, instead of a five-year loan term.

Agency Member Lee said that she tends to agree with Agency Member Grzan regarding the condition stipulated that no financial assistance would be sought from the Agency; noting that this condition was a part of the ERN. She indicated that the project is not in the same phase at this time. On the other hand, she felt that one of the benefits of the Redevelopment Agency is to be able to grant businesses loans that are to be repaid in order to be able to assist other businesses. She indicated that she was leaning toward approval of the loan, but was concerned about the prior condition of not seeking financial assistance.

Vice-chair Carr felt that this is an appropriate use of Redevelopment Agency dollars. He stated that when you think about economic development, you think about ways of sustaining existing businesses in Morgan Hill. The Redevelopment Agency's role is to keep businesses in operation, help existing businesses, help start up businesses, and further the City's goals. He felt that the project has been delivered as suggested by the applicant some time ago. He acknowledged that it was stipulated that there would not be additional financial assistance required as part of the negotiations of the ERN. He noted that it took more to renovate the building than what anyone thought it would; therefore, the developer is in this position today. In the best interest of a project the City promoted from the beginning, as well as promoting economic development, he recommended moving forward with the approval of the loan. However, he was not sure about a one-year loan as it places more risk on the loan than he would like to see. He indicated that a lending institute may be concerned about the one-year loan term with the City, and may hurt the Acevedo's ability to obtain refinancing in 12 months.

Chairman Tate felt that Agency Member Grzan made good points about a one year term. He suggested a compromise by having the applicant return to the Agency within a year, granting a couple years extensions beyond the one-year, if necessary. He agreed that financial assistance was not a part of the original agreement, and felt that the Agency needs a check point to hear whether the Acevedos can obtain refinancing within a year. He would like to see action taken within a year.

Agency Member Grzan supported reviewing the loan within the year to see if the Acevedos are seeking/qualifying for a loan. He expressed concern that the Agency would be taking an action that a bank is not willing to do. There may be a risk in granting the loan; noting that this is the public's money. Unlike a bank who can afford to weigh in on the risk, this is an action he is not comfortable taking. He indicated that he would be willing to grant a one-year loan. Reviewing the loan within the one year period would allow the Agency to extend the loan or take a different action, if needed.

**Action:**        *Agency Member Grzan made a motion to approve a one year loan; revisiting the matter within a year to determine if the loan needs to be extended. The motion failed for the lack of a second.*

Vice-chair Carr inquired what wording could be added to a motion that would incorporate a check in to have the applicant return to the Agency to advise as to the status of seeking financing within 12 months.

Chairman Tate recommended the approval of a 3-year loan term, having a check point with the Agency within a year so that the extension can occur at that time, if justified.

Agency Member Lee stated her support of a 3-year loan as a compromise as this would give the Acevedos time to seek refinancing of the loan.

**Action:** *Vice-chair Carr made a motion, seconded by Agency Member Lee, to **Direct** Staff to Prepare and Negotiate a three-year term Agreement with a one-year checkpoint by the El Toro Brewing Company; Subject to Review and Approval by the Agency Counsel.*

Agency Member Sellers noted that three members on the Redevelopment Agency Board were on the Council when the original decision was made. He felt that this is a great project and facility. He indicated that he reviewed the minutes relating to the purchase of the former police station by El Toro Brewing Company. In evaluating the original process, one of the criteria had to do with financing for the project. In order to be consistent, he indicated that he would decline support of the motion. However, he understands that there is support of the request. He acknowledged that this would be a long term facility.

**Vote:** *The motion carried 4-1 with Agency Member Sellers voting no.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **14. REVIEW OF COUNCIL POLICY, CP-06-02: CITY COUNCIL & REDEVELOPMENT AGENCY MEETING SCHEDULE**

Council Services and Records Manager Torrez informed the Council that a workplan item for Fiscal Year 2006-07 is to review Council and Administrative policies. In reviewing Council Policy, CP-06-02, staff wants to confirm that this policy still reflects the Council's policy relating to legislative recesses.

Mayor Tate opened the item to public comment. No comments were offered.

**Action:** *Council Member Grzan made a motion, seconded by Council Member Sellers to **Adopt** staff's recommended meeting schedule per Council Policy, CP-06-02.*

Mayor Tate said that in reviewing the policy a few months ago, he was surprised about the rigidity of canceling the two August meetings. He recommended that there be flexibility about canceling the summer meetings as identified/contained within the policy, based on the Council's calendar as they are put together. He recommended that the Council review the meeting schedule in the spring and decide for the year what it would like to do for that given year.

Council Member Sellers concurred with Mayor Tate's suggestion. He felt that this year, the decision is easy because the first meeting in July falls on the Fourth of July. He noted that there are five weeks in August; therefore, those Council members with children going back to school on August 22, 2007 will have some flexibility to plan their August schedules. He agreed to the recommendation of reviewing the summer meeting schedule, and supported amending the motion to stipulate reviewing the meeting schedule every spring.

**Action:** *Council Member Grzan made a motion, seconded by Council Member Sellers to **Amend** the motion to stipulate that Council Policy, CP-06-02 is amended to provide for a review*

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*of the summer meeting cancellation in the spring of each year. The motion carried unanimously (5-0).*

**15. ENDORSEMENT OF SENATE BILL (SB) 840, UNIVERSAL HEALTH INSURANCE**

Council Member Grzan requested Council endorsement of Senate Bill 840, the universal healthcare insurance plan. He noted that the State of California and this country is in a healthcare crisis for a number of reasons. He indicated that individuals are uninsured today because of the continuing rise in healthcare coverage; noting that it continues to climb each and every day. He indicated that 80% of Americans state that they are dissatisfied with the high national healthcare spending. He stated that a new survey shows that more than 25% state that housing problems resulted from medical debt; including the inability to make rent and mortgage payments. He said that elderly couples will need nearly \$200,000 in savings in order to pay for basic medical coverage with many experts believing that this figure is conservative and that \$300,000 would be a realistic figure. He indicated that 40-47 million Americans are without health insurance. He felt that there would be significant benefits to the City of Morgan Hill, as an employer, for the residents of Morgan Hill, and the residents in the State of California with the passage of SB840. He indicated that many cities, counties, and public/private agencies are being approached to endorse health insurance reform; specifically in SB840 as it provides for the most far reaching and beneficial health plan versus other proposals. He felt that the other plans being proposed will be a shortfall of what is needed, and will only delay the inevitable of moving where we need to go. He noted that health care spending is four times more than the amount spent on national defense. He said that in the United States, 16% of the gross national product is spent on healthcare.

Council Member Grzan did not believe that any individuals in America should be denied health care because of the inefficient way healthcare is administered. He felt that SB840 would provide health care at significantly reduced cost. He requested the Council endorse SB840, and send a message to our legislators that the City wants healthcare reform; one that far reaches and does the job it is intended to do.

Mayor Tate opened the floor to public comment.

Judy Kinker informed the Council that she has been a resident of Morgan Hill for 27-years, serves as co-president of the American Association of University Women (AAUW) in Morgan Hill and serves on the board for the South County California Retired Teachers Association. Passage of a universal health plan would provide for better coverage than currently exists. She identified the savings to individuals and school districts with the adoption of SB840 and identified the groups who have endorsed SB840. It was her belief that the residents of Morgan Hill would be strongly in favor of the Council endorsing SB840 as it would provide reasonable quality healthcare for everyone, and that there would be significant cost savings involved.

Lynn Penek-Holden stated that although she is not a Morgan Hill resident, she is a member of Healthcare for all California and that she has been working on this issue for approximately 13 years. She indicated that SB840 has gone through several iterations, and has been analyzed by a financial analyst group. The analyst group found that there would be approximately \$200 billion saved in the first year alone. She noted that California currently spends \$186 billion a year on healthcare. She stated that 30% of healthcare insurance monies go into the pockets of health insurance companies in the form of



advertising and profits. Medicare's overhead is 2-3%. She felt that there are a lot of items that can be recaptured with no increased spending necessary. She informed the Council that there are 41 co-authors for this bill, and that the bill has been passed by both houses of the legislature last year. She stated that Senator Perata and Assemblyman Nunez are both co-authors, even though they are moving with their own health reform plan. However, they have clearly stated that this is the state of the art gold standard for healthcare reform.

Barbara Horning, past president and current board member of the Santa Clara County Chapter of the Older Women's League, current president of the Mid Peninsula Division of the California Retired Teachers Association, and a member of the local Chapter of the AAUW, informed the Council that these organizations support SB840. She requested Council support/endorsement of SB840, Healthcare for All. She felt that there are benefits associated with this bill for the City as an employer, and for every resident in the City. She stated that SB840 would create a single universal health insurance pool, and will allow the State to eliminate \$20 billion in administrative costs, and profits to private insurances. It would also save money by purchasing medicine in bulk; using healthcare technologies to eliminate expensive errors, and provide everyone in California with the healthcare needed, when needed.

Carol Dalrymple informed the Council that she is a member of Healthcare for All, a statewide grass root organization in support of SB840. She stated that SB840 would provide comprehensive, affordable health insurance coverage for every resident in California. She felt that the plan is rational, human, economically sustainable, and will have benefits that would accrue to the resident of Morgan Hill and the City of Morgan Hill, as an employer. She urged the Council's yes vote on the resolution.

Anne Roesnzweig, Morgan Hill resident and labor lawyer, stated that she spends a lot of time reading about healthcare issues. She addressed her/her family members' past and current healthcare needs. She said that SB840 does not have the problem of tying healthcare coverage to employment. She urged the Council to take a stand in support of SB840, along with other cities.

Erin O'Brien indicated that the County of Santa Clara is running up to \$238+ million deficit this year. One of the pieces involved in the structural deficit is the cost of the Valley Medical Center (VMC). She said that a good part of the challenge in the VMC is the number of uninsured/under insured individuals that they serve, and that the County has committed to provide healthcare services. She informed the Council that there will be over 8,000 seriously mentally ill adults in Santa Clara County alone who are uninsured, and will not be able to receive services. This will have a major impact on the quality of life for everyone, and that this is a ripple affect of reduced services with the lack of universal health coverage. She noted that most of us are fortunate to have resources and insurances. However, her agency serves a lot of individuals with no insurance coverage. These individuals do not seek medical assistance until it is critical; ending up in emergency rooms where it is more costly and very late in the process/illness. She urged the Council to support SB840 as it will have big impacts on the County, the community and the citizens we all care so much about.

No further comments were offered.

Council Member Sellers said that he has spent some time researching this issue, and spent some time on the Healthcare for All website. He agreed that this is a significant issue and noted that there is a video that addresses this issue that can be displayed on the public sites as an informational item. This would be

a great opportunity to get the information out. He noted that the Council has a long standing policy not to formally endorse bills. He did not believe it would be appropriate to formally endorse SB840 as it would open a Pandora's Box for the Council to undertake. He agreed that SB840 and other related healthcare issues need to be addressed. While he appreciates the opportunity to hear from individuals and for the Council to do its part, he did not believe Council endorsement of SB840 would be the appropriate action to take, but that the airing of the issue is critical and important to do.

Mayor Pro Tempore Carr said that last fall he was able to hear/see a presentation by Healthcare for All. He stated that this was a good opportunity to learn more about the Senator's program. It was his belief that all Council members would state that they are supporters of healthcare reform in some form or another. He does not know if universal healthcare may be the means of reform. Because there are too many questions for the City of Morgan Hill, he finds it inappropriate for him to take a position on the City's behalf endorsing SB840 one way or the other. He would also hate to ask staff to evaluate this issue. He noted that the City has a lot on its plate, and that the Council has a very aggressive set of goals it established at the beginning of the year. Evaluating state and federal measures was not identified as a goal that the Council would dedicate staff time to review. He felt that it was great that Council Member Grzan brought this issue to the attention of the Council so that more individuals will hear about this issue and become more involved. He felt that it would be difficult for the Council to ask staff to spend time researching this issue for council members to take a position on SB840.

Mayor Tate noted that Council Member Grzan stated that SB840 was the most beneficial approach to healthcare. Although he does not rebuke this statement, he does not know this yet. He stated that he needs to understand why SB840 would be the most beneficial healthcare reform. The Council has received factual comparisons between the plans, but does not believe the Council has the pros and cons on the matter. He agrees with Mayor Pro Tempore Carr that it is the individual responsibility of Council members in collecting more information and coming up with their own positions on SB840. He stated that he has not developed a position to state that he endorses/does not endorse SB840, and would be abstaining on any motion presented.

Council Member Lee agreed that there are a lot of issues for and against SB840. She indicated that she has not yet had the opportunity to review all the issues. Without more research, she was not prepared to take a position this evening; noting that there has been a long standing history of council members not taking a position on this matter.

Council Member Grzan felt that it was a shortsighted step, and that something needs to be done about healthcare in America, in California and in Morgan Hill. He noted that there is a significant ramification and significant savings for the City as it provides healthcare for its employees. He felt there is a potential for other agencies, school districts and the City to have significant savings in healthcare costs. Reduction in the City's costs can result in reduced costs to the residents of Morgan Hill, or it can lead to increased services to which everyone would benefit. He was saddened that the Council has decided that it does not want to address this issue. He stated that taking a position as a Council is an appropriate action to extend healthcare to other individuals. He felt that it is time to look at healthcare as costs will continue to escalate. He noted that there are a number of Americans still without healthcare insurance, and are experiencing personal tragedies, bankruptcies and other issues. If the Council was to endorse SB840 this evening, he would agree to take the endorsement to the legislature himself, and would agree to meet with the Governor, if possible, as this is an important issue that needs to move forward.

**Action:** Council Member Grzan made a motion to **adopt** a resolution expressing support for Senate Bill, SB840, the California Healthcare Insurance Bill; urging the State Legislature and the Governor to support SB840. The motion failed for the lack of a second.

Council Member Lee clarified that she was not stating that there should not be a change in the way healthcare is administered. She is stating that at this time, she needs additional information as she does not know if SB840 is the answer. Therefore, she could not support the motion.

Council Member Sellers requested that the tape on this matter be made available to the City so that it can be aired on the public television channel(s).

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

### ***City Council Action***

#### **CLOSED SESSION:**

City Attorney Kern announced the below listed closed session item.

1.  
**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**  
Authority: Government Code Sections 54956 9(b) & (c)  
Number of Potential Cases: 1

#### **OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Tate opened the closed session to public comment. No comments were offered.

#### **ADJOURN TO CLOSED SESSION**

Mayor Tate adjourned the meeting to closed session at 9:47 p.m.

#### **RECONVENE**

Mayor Tate reconvened the meeting at 9:54 p.m.

#### **CLOSED SESSION ANNOUNCEMENT**

City Attorney Kern announced that no reportable action was taken in closed session.

#### **ADJOURNMENT**

There being no further business, Mayor/Chairman Tate adjourned the meeting at 9:55 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**

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## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** April 18, 2007

Agenda Item # **13**

Prepared By:

  
Asst. to the City  
Manager

Submitted By:

  
City Attorney

### **CONSIDERATION OF EXTENDING MEDICINAL MARIJUANA DISPENSARY MORATORIUM**

#### **RECOMMENDED ACTION:**

Extend the Ordinance prohibiting the issuance of permits, entitlements, licenses or any other approvals for medicinal marijuana dispensaries in the City of Morgan Hill for 10 months and 15 days. (Requires a four-fifths vote)

#### **EXECUTIVE SUMMARY:**

The City Council enacted an urgency forty-five (45) day interim Ordinance prohibiting the issuance of permits for medicinal marijuana dispensaries to allow Staff to more carefully study the issue. The forty-five (45) day Ordinance passed unanimously on March 7, 2007 and without an extension is set to expire on April 21, 2007. If the moratorium was allowed to lapse, the City currently has no process in place to regulate medicinal marijuana dispensaries under the City's current zoning ordinance.

State and federal law conflict regarding legal uses of marijuana. The State of California permits the use and cultivation for medicinal purposes by individuals and cooperatives of qualified persons to provide marijuana to those who cannot grow it themselves. Federal law forbids any use, distribution, or possession of marijuana, including personal medical uses. Faced with conflicting laws, local agencies have responded in a variety of ways, including regulating medical marijuana dispensaries and banning the businesses altogether through zoning ordinances.

The majority of Bay Area municipalities have not adopted specific standards for dispensaries. Staff believes that this is due to discrepancies between state and federal law on the legality of medicinal marijuana, as well as the tendency for municipalities to ignore the issue if there is no immediate necessity to address it (i.e. use permit application submitted).

The Morgan Hill Police Department is concerned that permitting medicinal marijuana dispensaries to operate in the City of Morgan Hill may cause an immediate threat to public health, safety, or welfare as noted in the attached memorandum (Attachment A). The Community Development Department currently has concerns related to zoning issues and the specificity regarding medicinal marijuana dispensaries, which will need to be addressed and are highlighted in the attached memorandum (Attachment B).

Given the current legal uncertainties (Attachment C) and operational difficulties with the regulation of medicinal marijuana dispensaries that have not been resolved, Staff believes it is in the City's best interest to extend the moratorium as allowed by statute for another 10 months and 15 days. During that time, it is hoped that legal issues will be clarified and Staff will stay abreast of the operational status of medicinal marijuana dispensaries in California. Staff will update Council when any significant events occur.

Government Code § 65858(a) permits the City to enact an interim ordinance to protect the public safety, health and welfare, by prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying or intends to study within a reasonable time. The interim ordinance shall require a four-fifths vote of the legislative body for adoption.

#### **FISCAL/RESOURCE IMPACT:**

The staff time required to prepare this report.

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ORDINANCE NO.     , NEW SERIES

INTERIM ORDINANCE PROHIBITING THE ISSUANCE OF  
PERMITS, ENTITLEMENTS, LICENSES, AND APPROVALS OF  
MEDICINAL MARIJUANA DISPENSARIES PENDING LEGAL  
OUTCOMES THAT SEEK TO CLARIFY THE LEGAL  
UNCERTAINTIES AND OPERATIONAL DIFFICULTIES WITH  
THE REGULATION OF MEDICINAL MARIJUANA  
DISPENSARIES

THE CITY COUNCIL OF THE CITY OF MORGAN HILL HEREBY FINDS AND  
DECLARES AS FOLLOWS:

WHEREAS, in 1996, the voters enacted Proposition 215, the Compassionate Use Act, which allows patients and their primary caregivers to possess and cultivate marijuana to treat serious illnesses pursuant to a doctor's permission;

WHEREAS, in 2003, the State Legislature enacted implementing legislation, SB 420, the Medical Marijuana Program Act, which created an identification card system for patients and caregivers to insulate them from arrest for possession and cultivation of marijuana for medical use;

WHEREAS, the federal Controlled Substances Act (CSA) prohibits the importation, use, cultivation, possession or distribution of marijuana for any reason and the U.S. Supreme Court held in *United States v. Oakland Cannabis Buyers Cooperative, et. al.* (2001) 532 U.S. 483, that there was no statutory or common law medical necessity exception to the prohibition against possession and use of marijuana under federal law even when the defendant is "seriously ill" and lacks alternative sources of relief;

WHEREAS, the U.S. Supreme Court held in *Gonzales v. Raich* (2005) 545 U.S. 1, that Congress has the power to prohibit the private cultivation and use of marijuana for medical purposes authorized by California law since personal use affects interstate commerce and the federal government continues to enforce the CSA against Californians who grow and use marijuana for medical purposes;

WHEREAS, the cities that have permitted and regulated dispensaries have reported problems directly or indirectly related to the businesses, including burglary attempts at the facilities, illegal drug dealers hanging around the area of the facility, driving under the influence of marijuana by members of the dispensaries, assaults, loitering around dispensaries, falsely obtained identification cards, marijuana being grown illegally on public lands, and other increases in criminal activity;

WHEREAS, medical marijuana dispensaries require increased demands for police response and have created health, safety, and welfare concerns;

WHEREAS, in June, 2005, a marijuana dispensary employee leaving work at the Collective Cannabis Club in Cherryland (one of six in unincorporated Alameda County) was leaving work when a masked gunman opened fire on his car. The Sheriff's Department indicated that this was one of six such incidents reported at dispensaries in the county in the first half of 2005;



WHEREAS, in August, 2005, three employees and three customers were tied up at a Hayward dispensary during an armed robbery;

WHEREAS, in October, 2005 there were two burglaries of medical marijuana dispensaries in unincorporated Alameda County near Hayward;

WHEREAS, in October, 2005 two juveniles were contacted after being observed near a dispensary wearing heavy coats and ski masks. A search revealed a replica 9mm pistol and marijuana;

WHEREAS, investigations of illegal drug distribution have led enforcement agencies to medical marijuana dispensaries from which marijuana is being diverted either by member resale to people with identification card, by armed robbery of facilities' stocks, or by active collusion of operators with dealers in the illegal market; and

WHEREAS, the City Council of the City of Morgan Hill seeks to protect the public health, safety and welfare of the citizens of Morgan Hill from the negative secondary affects associated with medical marijuana dispensaries and comply with federal laws.

WHEREAS, the City of Morgan Hill has received inquiries regarding the permitting and establishment of a medical marijuana dispensary with the City's limits.

WHEREAS, the City enacted a limited duration forty-five (45) day ordinance to study and consider appropriate amendments or additions to the City's Code that would govern the approval and issuance of permits and other approvals for medical marijuana dispensaries and that would be consistent with both state and federal law.

WHEREAS, City Staff has determined in their course of study that there are currently too many legal uncertainties between State and Federal law as well as operational difficulties with the regulation of medicinal marijuana dispensaries which are yet to be resolved, and a written report was issued 10 days prior to the expiration of the 45 day ordinance describing these determinations.

WHEREAS, California Government Code Section 65858 authorizes the City Council, by a four-fifths vote, to adopt an interim ordinance to prohibit uses the City is studying or intends to study within a reasonable time.

WHEREAS, In order to promote and protect the public health, safety, and welfare of the City's residents, and to allow the City Council an opportunity to study the impacts of such business activities on the health, safety, and welfare of the community and residents of the City and to consider possible additions and amendments to the City's code, it is necessary that this interim Ordinance be enacted.

WHEREAS, This Ordinance is intended to be of limited duration of ten months and fifteen days (15) days, nothing in this Ordinance is intended to effect or be construed to effect an unconstitutional taking of a property interest of any permitted use during its duration.

WHEREAS, In accordance with California Government Code Section 65858(a) and 65090, notice was published and a public hearing was held concerning the adoption of this Ordinance.

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1: APPLICABILITY**

The regulations set forth in this Ordinance shall apply to the issuance of permits, business licenses or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries. For the purposes of this Ordinance, a "Medical Marijuana Dispensary" shall mean a facility or location providing for the sale, offering for sale or display or providing for the education, referral, network services, facilitation or assistance in the lawful possession, acquisition, and distribution of medical cannabis to "Qualified Patients" and/or "Primary Caregivers," as those terms are defined in Health and Safety Code Section 11362.5 et. seq.

**SECTION 2: REGULATION**

No applications for permits, business licenses or other applicable entitlements for the establishment of a medical marijuana dispensary as that term is defined herein, shall be considered or approved and no such permits, business licenses or other applicable entitlements shall be issued unless the application was deemed complete and approved prior to the adoption of this Ordinance. Notwithstanding any other provision of the Morgan Hill City Code or any other ordinance or regulation of the City to the contrary, no permit or other entitlement for use or environmental document which either directly or indirectly has as its result the approval or allowance of a medical marijuana dispensary, shall be approved, or granted while this Ordinance remains in effect.

**SECTION 3: ENFORCEMENT**

(a) It shall be the duty of the Chief of Police, and all officers and employees of the City of Morgan Hill to enforce all provision of this Ordinance.

(b) Any person, firm or corporation, whether as principal or agent, employee or otherwise, violating or causing or permitting the violation of any of the provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the Santa Clara County Jail for a term not exceeding one hundred eighty (180) days or by both such fine and imprisonment. Such person, firm or corporation shall be deemed to be guilty of a separate offense for each day during any portion of which a violation of this Ordinance is committed, continued or permitted by such person, firm or corporation, and shall be punishable as herein provided.

**SECTION 4: EFFECTIVE DATE**

This Ordinance is an ordinance for the immediate preservation of the public peace, health, and safety, and shall take effect immediately in accordance with California Government Code Section 36937, upon the approval of four-fifths of the City Council and shall terminate in ten (10) months and fifteen (15) days, on \_\_\_\_\_, unless extended by the City Council in accordance with California Government Code Section 65858.

## **SECTION 5: NO TAKING OF PROPERTY RIGHT INTENDED**

Nothing in this Ordinance shall be interpreted to effect an unconstitutional taking of the property right of any person. If the City Council determined, based on specific evidence in the administrative record, that the application of one or more provisions of this Ordinance to a proposed project would effect an unconstitutional taking of a property right, the City Council shall disregard such provision or provisions to the extent necessary to avoid such unconstitutional taking.

## **SECTION 6: SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, clause or phrase hereof irrespective of the fact that any one or more section, subsections, clauses or phrases be held unconstitutional, invalid or unenforceable.

This Ordinance was passed and adopted on the      day of April 2007, by the following vote:

AYES:            COUNCIL MEMBERS:  
NOES:           COUNCIL MEMBERS:  
ABSTAIN:       COUNCIL MEMBERS:  
ABSENT:        COUNCIL MEMBERS:

ATTEST:

APPROVED:

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Steve Tate, Mayor

### **∞ CERTIFICATE OF THE CITY CLERK ∞**

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at a regular meeting held on the      day of April 2007.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
IRMA TORREZ, City Clerk



## **CITY OF MORGAN HILL POLICE DEPARTMENT**

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**To: Assistant to the City Manager Brian Stott**  
**From: Commander David Swing**  
**Date: March 26, 2007**  
**Re: Medicinal Marijuana Dispensaries**  
**CC: Chief Bruce C. Cumming**

I have prepared the following memo in response to your request for the police department's perspective on medicinal marijuana dispensaries. After consulting with other police agencies and conducting some preliminary research, it is the police department's recommendation to continue the existing moratorium prohibiting medical marijuana facilities. The department reached this conclusion due to the conflict between Federal and State law and a forecasted increased number of calls for service from a department that is already low on staff.

The conflict between federal and state law is apparent in as much as federal law continues to prohibit the possession of marijuana for any reason and state law allows its use for medicinal purposes. The Supreme Court further confirmed this fact when it recently overturned a Ninth Circuit Court ruling stating the government could regulate marijuana possession at the federal level even if individual states permitted it. Therefore, permitting a marijuana dispensary would place the city in conflict with federal law. The court will undoubtedly hear more cases on the matter before it is settled; which is why the police department recommends the short-term solution of extending the moratorium to allow these cases to proceed through the court system before a long-term solution is enacted.

Another reason the department supports extending the moratorium ties into overall police staffing. The police department presently responds to the highest number of calls for service per officer of any other agency in the county. The addition of a medical marijuana dispensary will increase the number of calls for service for an already overburdened department. There are documented cases in other counties where crimes have occurred either on-site or in the surrounding neighborhoods of the dispensaries. In addition to drug related crimes, the department will be called upon to respond to complaints of suspicious persons and alarm calls from the business. An unknown side-effect of legalized marijuana is the under-ground market created by the legal purchase of the drug. An example of this occurred in Los Banos, on two separate incidents, where their School Resource Officer arrested high school students selling marijuana on campus. The marijuana was labeled from two dispensaries in Alameda County. The police department believes that a dispensary in our community will increase calls for service in the proximity of the facility and also in the community at large. If the city chooses to pursue the matter further, we must first address the issues surrounding the department's level of staffing in order to adequately address the potential outcomes of such a business.

Therefore, the police department recommends extending the moratorium on medical marijuana dispensaries until the court has more time to resolve the conflict between federal and state law and the city can address the issues related to police staffing.



## MEMORANDUM

**To:** Brian Stott, Assistant to the City Manager

**Date:** March 27, 2007

**From:** Terry Linder, Senior Planner

**Subject:** Medical Marijuana Dispensaries

The Morgan Hill zoning code currently does not define "Medical Marijuana Dispensaries" as a specific land use. The lack of specification allows for interpretation of the zoning ordinance to allow for a dispensary use in zoning districts which currently permit similar uses such as Medical Offices or Medical Facilities.

Due to the potential problems and land use conflicts which can occur with a Medical Marijuana Dispensary, the Council may wish to consider amendment to the City's zoning ordinance to specifically address "Medical Marijuana Dispensary" as a land use in Morgan Hill. Options include a zoning text amendment that could list a "Marijuana Dispensary" use as a prohibited in all zoning districts or conversely as a permitted use in various zoning districts. Within the two extremes, the City Council may wish to consider conditionally allowing Medical Marijuana Dispensaries based on meeting specific locational and operational criteria. Such criteria could include such things as minimum separation from schools, parks and residential areas and/or operation by a licensed pharmacist.

Should the City Council wish to consider options beyond prohibition for the regulation of Medical Marijuana Dispensaries, further analysis of the options would be required in order to put forth a zoning text amendment that will provide adequate protection of the public health, safety and welfare.

**STROMBOTNE LAW FIRM**  
**LEGAL RESEARCH MEMO**

**MEDICAL MARIJUANA IN CALIFORNIA**

April 3, 2007

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Following is a summary of relevant legal issues of interest to the City of Morgan Hill regarding medical marijuana dispensaries in California.

**1. Introduction**

State law currently allows the possession cultivation, and non-profit personal use of medical marijuana with a physician's recommendation. Federal law (the Controlled Substance Act) prohibits the intentional manufacture, distribution, dispensing or possession of marijuana. Prop 215 also provides legal protection for physicians who recommend the use of marijuana as a medical treatment.

Since enactment of the California Compassionate Use Act, state and federal courts have issued conflicting and contradictory opinions on whether or not a state statute can exempt a medical marijuana user from federal prosecution. This issue remains unresolved by the courts.

**2. Federal Controlled Substance Act (CSA) 1970**

Federal law prohibits the importation, use, cultivation, possession or distribution of marijuana for any reason. Under the Controlled Substances Act (21 U.S.C.A. 801 et seq.), enacted by Congress in 1970, marijuana is classified as a Schedule I controlled substance. The classification is based on a determination that marijuana: (1) has a high potential for abuse, (2) has no accepted medical use, and (3) is not accepted as safe, even when used under medical supervision. Congress has not changed its designation of marijuana as a Schedule I drug despite the passage of medical marijuana laws in twelve states and the District of Columbia.

**3. California Compassionate Use Act 1996**

In 1996 the voters enacted Proposition 215, the Compassionate Use Act, which allows patients and their primary caregivers to possess and cultivate marijuana to treat serious illnesses pursuant to a doctor's recommendation.

On October 12, 2003, Governor Davis signed SB 420 to address several shortcomings of Proposition 215. SB 420 broadened the Proposition 215 definition of primary caregiver to include caregivers that serve more than one patient and specifically allowed for the creation of medical marijuana collectives and cooperatives. It provides that marijuana may not be cultivated or distributed for profit, but a primary caregiver may get compensation for his or her actual expenses.

SB 420 also established possession limits for patients and their caregivers equal to eight ounces of dried marijuana and no more than six mature or twelve immature marijuana plants per person. Section 11362.77, however, specifically allows attending physicians to prescribe higher amounts and lets counties and cities retain or establish more liberal local guidelines that exceed these state limits.

The purpose of the law is “to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief” and to ensure that such users and their caregivers are not subject to criminal prosecution.

The law provides for a voluntary identification card system administered by the CA Dept. of Health Services and issued by the county health department.

#### **4. California State Court Decisions**

In the case of *People v. Mower*, (2002) 28 Cal 4th 457, the legitimacy of Prop 215 was challenged and the California Supreme Court ultimately decided in favor of Proposition 215. The Court ruled that not only was the possession of marijuana for medical purposes a defense to the charge that one was in possession of an illegal drug, but it could also be used pre-trial in the motion to dismiss the underlying prosecution. The Court stated, in part, that the Act “... operates to render non-criminal certain conduct which would otherwise be criminal.”

In *People v. Urziceanu* (2005) 132 Cal App 4th 747, 783 the court stated that “the Legislature also exempted those qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes from criminal sanctions for possession for sale, transportation or furnishing marijuana, maintaining a location for unlawfully selling, giving away, or using controlled substances, managing a location for the storage, distribution of any controlled substance for sale, and the laws declaring the use of property for these purposes a nuisance.”

#### **5. Federal Court Decisions**

The Federal Drug Enforcement Administration (DEA) aggressively attempted to close the dispensaries when they began operating in Oakland, San Francisco, and Santa Cruz. The enforcement of the CSA resulted in a number of significant court decisions.

In *United States v. Oakland Cannabis Buyers Cooperative, et. al* (2001) 532 U.S. 483, the U.S. Supreme Court held that there was no statutory or common law medical necessity exception to the prohibition against possession and use of marijuana under federal law even when the defendant is “seriously ill” and lacks alternative sources of relief.

In *Gonzales v. Raich* (2005) 545 U.S. 1, the U.S. Supreme Court held that Congress has the power to prohibit the private cultivation and use of marijuana for medical purposes authorized by



California law since personal use affects interstate commerce. Although the opinion focused narrowly on the scope of Congressional power under the Commerce Clause, the practical significance of the decision is that the federal government may continue to enforce the CSA against Californians who grow and use marijuana for medical purposes. The case did not expressly rule on whether California law permitting medical marijuana use was preempted by the CSA. The Supreme Court determined that marijuana possessed, cultivated and/or sold within the purported scope of California's Compassionate Use Act remains a felony under federal law.

After the U.S. Supreme Court's ruling in 2005 (discussed above), the District Court's ruling on remand was very recently decided by the 9<sup>th</sup> Circuit Court of Appeals in *McClaryraich v Gonzalez* WL 754759 (9th Cir. (Cal.), 2007). The plaintiffs sought declaratory and injunctive relief based on the alleged unconstitutionality of the Controlled Substances Act, and a declaration that medical necessity precludes enforcement of the Controlled Substances Act against them. The district court denied appellants' motion for a preliminary injunction and the 9<sup>th</sup> Circuit affirmed. Although the plaintiff appeared to satisfy the factual predicate for necessity defense, in that if she were to obey Controlled Substances Act (CSA) rather than using marijuana pursuant to California Compassionate Use Act she would have to endure intolerable pain and perhaps would die, the Court of Appeals could not issue a preliminary injunction preventing enforcement of the CSA on such basis, since oversight and enforcement of the necessity-defense-based injunction would prove impracticable, in the ongoing vitality of the injunction could hinge on factors including the user's medical condition or advances in lawful medical technology.

## 6. Pending Federal and California Cases

The following cases are currently being litigated in California courts. The outcome of these cases will likely clarify the dispute between California and the Federal Government regarding the legal authority to authorize medical marijuana.

### a. *County of Santa Cruz v. John Ashcroft*

U.S. District Court for the Northern District

The City of Santa Cruz permits the sale of medical marijuana. After Federal DEA agents conducted a raid on a Santa Cruz cooperative and seized marijuana plants, the City and others, filed suit in April 2003, for an injunction to prevent the federal government from arresting or prosecuting medical marijuana users for the intrastate cultivation, possession, delivery or use of cannabis for personal medical purposes on the advice of a physician in accordance with state law. In an April 2004 order, the District Court, Judge Fogel, held that plaintiffs showed a likelihood of success on the merits of their claim that Controlled Substances Act (CSA), as applied to them, exceeded Congress's Commerce Clause authority, as required to obtain a preliminary injunction precluding enforcement of the CSA against them. See *County of Santa Cruz, Cal. v. Ashcroft* 314 F.Supp.2d 1000, (N.D. Cal., 2004). This ruling pre-dated the U.S. Supreme Court's contrary ruling in *Gonzales v. Raich*. The case is still pending.

**b. *County of San Diego v. San Diego Norml***  
San Diego County Superior Court

In February 2006, the County of San Diego, County of San Bernardino, and later the County of Merced filed suit in San Diego County Superior Court against the State of California and others, challenging California's medical marijuana laws as being preempted by the Federal CSA. Other defendants and intervenors in the action include San Diego NORML (National Organization for the Reform of Marijuana Laws), Wo/Men's Alliance for Medical Marijuana, and Americans for Safe Access. Legal counsel for the defendants is the ACLU Drug Law Reform Project in Santa Cruz. The defendants argued that the CSA expressly provides that the federal enactment must not be construed as preempting state law, except where there is a positive conflict and the two cannot consistently stand together. [21 U.S.C. §903]. They argue that California's laws do not conflict with Federal Law. The case is still pending in the trial court.

**c. Other State Court Lawsuits**

An organization called Americans For Safe Access has filed separate lawsuits against the following cities for enacting bans on medical marijuana dispensaries: City of Fresno, City of Concord, City of Pasadena and City of Susanville.

Plaintiffs allege in the Fresno lawsuit, that Fresno is in violation of SB 420, which the California legislature passed into law in 2003 in order to clarify the Compassionate Use Act (CUA), noting that uncertainties in the act have prevented qualified patients and primary caregivers from obtaining the protections afforded by the act. According to the ASA lawsuit, cities and counties are compelled by SB 420 to implement ways in which qualified patients and designated primary caregivers can obtain the full protections afforded by the act.

The plaintiffs state their position as follows:

"The permanent ban on dispensing, enacted by Fresno and a handful of other cities in California, is an unlawful barrier to medical marijuana," said ASA Legal Campaign Director Kris Hermes. "Without the means of growing it themselves or finding a caregiver to do it for them, dispensing collectives may be a patient's only legal option for obtaining medical marijuana."

**7. Analysis Of The Current State Of The Law On Medical Marijuana**

The possession, cultivation and sale of marijuana is forbidden by Federal and California law, with the sole exception of medical marijuana usage authorized by California statute. It remains an unresolved legal issue whether California has the legal authority to create a statutory exemption from Federal prosecution for medical marijuana.

Although past decisions of the California State Appellate Courts, and the 9<sup>th</sup> Circuit Federal Court had previously ruled in favor of such an exemption, the 2005 ruling by the U.S. Supreme Court in *Gonzales v. Raich*, reversed the 9<sup>th</sup> Circuit, which the 9<sup>th</sup> Circuit dutifully followed in its 2007 ruling in the same case.

Until this issue is resolved with finality in the courts anyone who possesses, cultivates or sells marijuana in California, even though in full compliance with California's Compassionate Use Act, runs the risk that they could be arrested by federal agents and prosecuted by the federal government.

## National Library Week 2007 Proclamation

*This document is also available in Spanish on The Campaign for America's Libraries Website at [www.ala.org/@yourlibrary](http://www.ala.org/@yourlibrary). Click on NLW 2007 icon*

**WHEREAS**, our nation's public, academic, school and specialized libraries transform their communities;

**WHEREAS**, libraries play a vital role in supporting the quality of life in their communities;

**WHEREAS**, librarians are trained professionals, helping people of all ages and backgrounds find and interpret the information they need to live, learn and work in the 21st century;

**WHEREAS**, libraries are part of the American Dream – places for opportunity, education, self-help and lifelong learning;

**WHEREAS**, libraries bring you a world of knowledge both in person and online;

**WHEREAS**, libraries are a key player in the national discourse on intellectual freedom, equity of access, and narrowing the “digital divide;”

**WHEREAS**, libraries, librarians, library workers and supporters across America are celebrating National Library Week with The Campaign for America's Libraries.

**NOW, THEREFORE**, be it resolved that I (*name, title of official*) proclaim National Library Week, April 15-21, 2007. I encourage all residents to visit the library this week to take advantage of the wonderful library resources available and thank their librarians and library workers for making information accessible to all who walk through the library's doors. Come see why now is the perfect time to come together @ your library.

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